

Superior Court of California County of San Bernardino



Local Rules of Court

Effective January 1, 2004

LIST OF CURRENTLY EFFECTIVE LOCAL RULES

JANUARY 1, 2004

CHAPTER 1 - COURT RULES AND ADMINISTRATION

PART 1 - INTRODUCTION

RULE 111 - TITLE OF NEW ENTITY PASSAGE OF SENATE CONSTITUTIONAL
AMENDMENT 4 (SCA 4), PROP. 220 (EFF. JANUARY 1, 1999.)

RULE 112 - EFFECTIVE DATE (EFF. AS AMENDED JULY 1, 2000)

RULE 113 - METHOD OF ADOPTION (EFF. JANUARY 1, 1999.)

RULE 114 - EFFECT OF THE RULES AND CITATION OF RULES (EFF. AS
AMENDED JANUARY 1, 1999.)

RULE 115 - CONSTRUCTION AND APPLICATION OF RULES (EFF. JULY 1,
1998.)

PART 2 - DESIGNATION OF JUDGES

RULE 120 - JUDICIAL RESOURCES (EFF. JANUARY 1, 1999.)

PART 3 - DISTRICTS OF THE COURT

RULE 130 - DISTRICTS DEFINED (EFF. JANUARY 1, 1999.)

RULE 131 (EFF. AS AMENDED JANUARY 1, 1999.)

RULE 132 (EFF. JANUARY 1, 1999.)

RULE 132.2 (EFF. JULY 1, 1998.)

RULE 132.3 (EFF. JULY 1, 1998.)

RULE 133 TRIAL JURY VENIRES (EFF. JANUARY 1, 2000)

CHAPTER 2 - ADMINISTRATIVE ORGANIZATION

PART 1 - PRESIDING JUDGE

RULE 210 - DUTIES (EFF. JULY 1, 1998. AS AMENDED EFF. JULY 1, 2003)

RULE 211 - ELECTION (EFF. AS AMENDED JULY 1, 2001.)

RULE 212 - NOMINATION (EFF. AS AMENDED JANUARY 1, 1999.)

RULE 212.1 (EFF. AS AMENDED JULY 1, 2001)

RULE 212.2 (EFF. AS AMENDED JULY 1, 2001)

RULE 212.3 (EFF. JULY 1, 1998.)

RULE 213 - REMOVAL/VACANCY (EFF. JULY 1, 1998.)

PART 2 - MEETINGS

RULE 220 (EFF. JULY 1, 1998 AS AMENDED JANUARY 1, 1999.)

RULE 220.1 (EFF. JULY 1, 1998.)

RULE 220.2 (EFF. JULY 1, 1998.)

RULE 221 (EFF. JULY 1, 1998.)

PART 3 - EXECUTIVE COMMITTEE

RULE 230 - COMPOSITION (AS AMENDED EFF. JANUARY 1, 2004.)

RULE 231 - DUTIES (EFF. AS AMENDED JULY 1, 2000)

RULE 231.1 (EFF. JANUARY 1, 2000.)

RULE 231.2 (~~EFF. AS AMENDED JULY 1, 2000.~~ AS AMENDED EFF. JANUARY 1, 2004.)

RULE 231.3 (EFF. JANUARY 1, 2000.)

RULE 231.4 (AS AMENDED EFF. JANUARY 1, 2004.)

RULE 231.5 (EFF. AS AMENDED JULY 1, 2000.)

RULE 231.6 (EFF. JULY 1, 1998.)

RULE 232 - TERM OF OFFICE (EFF. AS AMENDED JULY 1, 2000.)

RULE 233 - QUORUM (~~EFF. AS AMENDED JULY 1, 2000.~~ AS AMENDED EFF. JANUARY 1, 2004.)

RULE 234 - EFFECT OF ACTION OF THE EXECUTIVE COMMITTEE (EFF. AS AMENDED JULY 1, 2000.)

PART 4 - COURT EXECUTIVE OFFICER

RULE 240 - SELECTION (EFF. AS AMENDED JANUARY 1, 2001.)

RULE 241 - STATUTORY RESPONSIBILITIES (EFF. JANUARY 1, 1999.)

RULE 241.1 - TRANSFER OF POWERS, DUTIES AND RESPONSIBILITIES FROM THE COUNTY CLERK TO THE EXECUTIVE OFFICER (EFF. JANUARY 1, 1999.)

RULE 242 - DUTIES (EFF. JULY 1, 1998.)

RULE 242.1 (EFF. AS AMENDED JULY 1, 2003)

RULE 242.2 (EFF. AS AMENDED JULY 1, 2000.)

RULE 242.3 (EFF. AS AMENDED JULY 1, 2000.)

RULE 242.4 (EFF. AS AMENDED JULY 1, 2000.)

RULE 242.5 (EFF. JULY 1, 1998.)

RULE 242.6 (EFF. AS AMENDED JULY 1, 2000.)

RULE 243 - EMPLOYMENT STATUS (EFF. JULY 1, 1998.)

PART 5 - JUDICIAL STAFF COUNSEL

PART 6 - COURT COMMISSIONER

RULE 260 - APPOINTMENT (EFF. JULY 1, 1998.)

RULE 260.1 - PROCEDURE FOR APPOINTMENT (EFF. JULY 1, 1998.)

RULE 261 - QUALIFICATIONS (EFF. JANUARY 1, 1999.)

RULE 262 - VACATION (EFF. JULY 1, 1998)

RULE 263 - GENERAL AUTHORITY (EFF. JANUARY 1, 1999.)

PART 7 - DISCIPLINARY PROCEDURES FOR COURT EXECUTIVE OFFICER AND COURT COMMISSIONERS

RULE 270 - REPRIMAND OF SUPERIOR COURT COMMISSIONER OR SUPERIOR COURT EXECUTIVE OFFICER (EFF. JULY 1, 1998.)

RULE 271 - COMPLAINTS AGAINST COMMISSIONERS (EFF. JANUARY 1, 1999.)

RULE 272 – DISCIPLINARY ACTION AGAINST COURT COMMISSIONER AND COURT EXECUTIVE OFFICER (EFF. JANUARY 1, 2000)

CHAPTER 3 - DISTRIBUTION OF BUSINESS

RULE 310 - DISTRIBUTION OF BUSINESS BY PRESIDING JUDGE (EFF. JULY 1, 1998. AS AMENDED EFF JULY 1, 2003)

RULE 311 - DIRECT CALENDARING OF CIVIL CASES

RULE 311.1 - ASSIGNMENT TO JUDICIAL OFFICER (EFF. JULY 1, 1998.)

RULE 311.2 - CATEGORICAL DEPARTMENT CALENDARS (EFF. JULY 1, 1998.)

RULE 311.3 - ALL-PURPOSE ASSIGNMENT TO JUDICIAL OFFICER (EFF. JULY 1, 1998. AS AMENDED EFF. JULY 1, 2003)

RULE 320 - ASSIGNMENT OF BUSINESS

RULE 321 - CIVIL DEFAULTS

RULE 321.1 - SETTING HEARINGS (EFF. JULY 1, 1998.)

RULE 321.2 - FORMS (EXCEPTIONS) (EFF. JULY 1, 1998. AS AMENDED EFF JULY 1, 2003)

RULE 321.3 - FORMS (EFF. JULY 1, 1998.)

RULE 330 - TELEPHONIC APPEARANCES (EFF. AMENDED JANUARY 1, 1999.)

RULE 330.1 - PRIOR APPROVAL (EFF. JANUARY 1, 1999.)

RULE 330.2 - NOTIFICATION TO THE COURT (EFF. JULY 1, 1998.)

RULE 330.3 - SCHEDULED TELEPHONIC APPEARANCE (EFF. JULY 1, 1998.)

RULE 330.4 - OBLIGATION FOR PLACEMENT OF CALL (EFF. JULY 1, 1998.)

RULE 330.5 - COST OF TELEPHONE CALL (EFF. JULY 1, 1998.)

RULE 330.6 - NON-APPEARANCE BY TELEPHONE CALL (EFF. JULY 1, 1998.)

RULE 330.7 - TRAILING OR RECALLED STATUS (EFF. JULY 1, 1998.)

RULE 331 - UNCONTESTED MATTERS (EFF. JULY 1, 1998.)

RULE 332 - APPELLATE DIVISION (EFF. AS AMENDED JULY 1, 2001.)

CHAPTER 4 - CIVIL CASE MANAGEMENT

RULE 400 - CIVIL CASES SUBJECT TO THE DELAY REDUCTION ACT (EFF. AS AMENDED JULY 1, 2002.)

RULE 401 - POLICY (EFF. AS AMENDED JULY 1, 2002.)

RULE 402 - DEFINITION (EFF. JULY 1, 1998.)

RULE 402.1 - EXCEPTIONAL CASES (EFF. JULY 1, 1998.)

RULE 403 - ASSIGNED JUDGES (EFF. JULY 1, 1998.)

RULE 404 - DESIGNATION (EFF. JULY 1, 1998.)

RULE 408 - CASE MANAGEMENT CONFERENCE (EFF. AS AMENDED JULY 1, 2001.) (EFF., AS AMENDED JULY 1, 2002.)
RULE 409 - ARBITRATION OR ALTERNATIVE TRIAL (EFF., AS AMENDED JULY 1, 2002.)
RULE 410 - MANDATORY SETTLEMENT CONFERENCE (MSC) (EFF. JULY 1, 1998.)
RULE 411 - TRIAL MANAGEMENT CONFERENCE (TMC) (EFF. JULY 1, 1998.)
RULE 412 - EXCEPTIONAL CASES (EFF. JULY 1, 1998.)
RULE 413 - UNINSURED MOTORIST (UM) CLASS (EFF. JULY 1, 1998.)
RULE 415 - TRIAL READY LIST (EFF., AS AMENDED JULY 1, 2002.)
RULE 416 - DUTY OF COUNSEL AS TO TRIAL DATE ASSIGNED (EFF. JULY 1, 1998.)
RULE 417 - UNCONTESTED CALENDARS (EFF., AS AMENDED JULY 1, 2002.)
RULE 418 - STATEMENT OF POLICY RE CONTINUANCES OF ANY MATTER (EFF. JULY 1, 1998.)
RULE 418.1 - CIVIL CASES (EFF. JULY 1, 1998.)
RULE 418.2 - CIVIL CASES, LAW AND MOTION, AND VOLUNTARY SETTLEMENT CONFERENCE POLICY (EFF. JULY 1, 1998.)
RULE 419 – CIVIL COURT COMMUNICATION PROCOTOL (EFF JULY 1, 2003)
RULE 420 – CASES REMOVED TO OTHER COURTS (EFF JULY 1, 2003)

CHAPTER 5 - CIVIL LAW AND MOTION

RULE 510 - SUBSEQUENT FILING (EFF. JULY 1, 1998 AS AMENDED EFF JULY 1, 2000.)
RULE 520 - MOTION DATE (EFF. JULY 1, 1998.)
RULE 530 - JUDICIAL ASSIGNMENTS (EFF. JULY 1, 1998.)
RULE 540 - EX PARTE ORDERS AND CIVIL WRITS (EFF. JULY 1, 1998. AS AMENDED EFF JULY 1, 2003)
RULE 550 - CONTINUANCES (EFF. JULY 1, 1998.)
RULE 560 - MOTIONS REMOVED FROM CALENDAR (EFF. JULY 1, 1998.)
RULE 591 - ORDERS AND JUDGMENTS
RULE 591.1 - MINUTE ORDERS (EFF. JULY 1, 1998.)
RULE 591.2 - JUDGMENT FORMS (EFF. JULY 1, 1998.)
RULE 592 - FAILURE TO OBJECT (EFF. JULY 1, 1998.)
RULE 593 - CAPTIONS (EFF. JULY 1, 1998.)

CHAPTER 6 - SETTLEMENT CONFERENCES

RULE 610 - SETTLEMENT CONFERENCE CALENDARS (EFF. JULY 1, 1998.)
RULE 610.1 - VOLUNTARY SETTLEMENT CALENDAR (EFF. JULY 1, 1998.)
RULE 610.2 - VOLUNTARY SETTLEMENT CONFERENCE RULES (EFF. JULY 1, 1998.)
RULE 611 - PERSONS WHOSE PRESENCE IS REQUIRED (EFF., AS AMENDED JULY 1, 2002.)
RULE 612 - BRIEFS (EFF. JULY 1, 1998, AS AMENDED JANUARY 1, 2002.)
RULE 613 - DISCOVERY (EFF. AS AMENDED JULY 1, 2002.)

RULE 614 - DEMANDS AND OFFERS (EFF. JULY 1, 1998.)

RULE 615 - FAILURE TO ATTEND OR BE PREPARED (EFF. AS AMENDED JULY 1, 2002.)

RULE 616 - CONTINUANCES (EFF. JANUARY 1, 1999.)

RULE 617 - NOTICE OF SETTLEMENT (EFF. JANUARY 1, 1999.)

RULE 620 - ARBITRATION (EFF. AS AMENDED JULY 1, 2002.)

CHAPTER 7 - APPLICATION FOR EX PARTE ORDERS

RULE 710 - APPLICATIONS

RULE 711 - FEE (EFF. JULY 1, 1998.)

RULE 712 - FORM (EFF. JULY 1, 1998.)

RULE 720 - LIMITATIONS ON GRANTING (EFF. JULY 1, 1998.)

RULE 730 - TO WHOM PRESENTED

RULE 730.1 - IN PARTICULAR

RULE 730.2 - CIVIL EX PARTE AND WRITS (EFF. JULY 1, 1998.)

RULE 730.3 - CRIMINAL EX PARTE AND WRITS (EFF. JULY 1, 1998.)

RULE 730.4 - JUVENILE COURT EX PARTE AND WRITS (EFF. AS AMENDED JANUARY 1, 1999.)

RULE 730.5 - FAMILY LAW (EFF. JULY 1, 1998.)

RULE 730.6 - PROBATE (EFF. JULY 1, 1998.)

RULE 730.7 - MENTAL HEALTH (EFF. JULY 1, 1998.)

RULE 740 - PRESENTATION

RULE 740.1 - GUARDIAN AD LITEM (EFF. JULY 1, 1998.)

RULE 740.2 - APPLICATION FOR REDUCTION OF UNDERTAKING (EFF. JULY 1, 1998.)

RULE 740.3 - SHORTENING OR EXTENDING TIME (EFF. JULY 1, 1998.)

RULE 740.4 - APPOINTMENT OF COUNSEL FOR MILITARY PERSONNEL (EFF. JULY 1, 1998.)

RULE 740.5 - SUBSTITUTE SERVICE, DOMESTIC (EFF. JULY 1, 1998.)

RULE 740.6 - SUBSTITUTE SERVICE, FOREIGN (EFF. JULY 1, 1998. AMENDED EFF JULY 1, 2003)

RULE 740.7 - APPLICATION FOR MONEY DEPOSITED (EFF. JULY 1, 1998. AS AMENDED EFF JULY 1, 2003.)

RULE 740.8 - PROPERTY OTHERWISE DEPOSITED (EFF. JULY 1, 1998. AMENDED EFF JULY 1, 2003)

RULE 740.9 - EXECUTION ON INSTALLMENT ORDER OR JUDGMENT (EFF. JULY 1, 1998.)

CHAPTER 8 – CASES UNDER CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

RULE 880 – CEQA DESIGNATION (EFF. JULY 1, 2001)

CHAPTER 9 - ECONOMIC LITIGATION

RULE 900 - ECONOMIC LITIGATION PROGRAM
RULE 900.1 (EFF. JULY 1, 1998.)

CHAPTER 10 - UNLAWFUL DETAINER ACTIONS

RULE 1000 - UNLAWFUL DETAINER ACTIONS (EFF. JULY 1, 1998.)

CHAPTER 12 - PROBATE

RULE 1200 - PROBATE ACTIONS (EFF. JULY 1, 1998.)

CHAPTER 13 - CRIMINAL RULES

RULE 1300 (EFF. JULY 1, 1998.)
RULE 1301 (EFF. JANUARY 1, 1999.)
RULE 1303 (EFF. JULY 1, 1998.)
RULE 1304 (EFF. AS AMENDED JANUARY 1, 1999.)
RULE 1305 (EFF. JULY 1, 1998.)
RULE 1306 (EFF. JULY 1, 1998.)
RULE 1307 (EFF. JULY 1, 1998.)
RULE 1308 - CRIMINAL LAW & MOTION (EFF. AS AMENDED JULY 1, 2001.)
RULE 1309 - P.C. 1538.5 MOTIONS (EFF. JULY 1, 1998.)
RULE 1310 - MOTIONS TO QUASH OR TRAVERSE WARRANTS (EFF. JULY 1, 1998.)
RULE 1311 – CRIMINAL COURT COMMUNICATION PROTOCOL (EFF JULY 1, 2003)
RULE 1320 - P. C. 995 MOTIONS (EFF. JULY 1, 1998.)
RULE 1321 - MOTIONS TO CONTINUE (EFF. JULY 1, 1998.)
RULE 1322 - TRANSFER OF CASES (EFF. JULY 1, 1998.)
RULE 1327 - VENUE OF ACTIONS (EFF. JANUARY 1, 2000)
~~RULE 1328 – FEE SCHEDULE FOR CRIMINAL CASES IN JUVENILE COURT~~
~~(EFF. AS AMENDED JANUARY 1, 2002) (RENUMBERED AS RULE 1401, EFF.~~
~~JANUARY 1, 2004)~~
~~RULE 1329 – FEE SCHEDULE FOR CRIMINAL CASES – GENERAL (EFF. AS~~
~~– AMENDED EFF. JANUARY 1, 2003) (RENUMBERED AS RULE 1402, EFF.~~
~~JANUARY 1, 2004)~~

~~RULE 1330 – FEE SCHEDULE FOR CRIMINAL CASES – COMPLEX FELONY~~
~~(AS AMENDED EFF. JANUARY 1, 2003) (RENUMBERED AS RULE 1403,~~
~~EFF. JANUARY 1, 2004)~~

~~RULE 1341 – FEE SCHEDULE FOR APPEALS (AMENDED EFF. JANUARY 1,~~
~~2003.) (RENUMBERED AS RULE 1404, EFF. JANUARY 1, 2004)~~

CHAPTER 14 - COUNSEL/INVESTIGATOR/EXPERT FEES

RULE 1401 – FEE SCHEDULE FOR CRIMINAL CASES IN JUVENILE COURT
(FORMER RULE 1328 RENUMBERED AS RULE 1401 EFF. JANUARY 1,
2004)

RULE 1402 – FEE SCHEDULE FOR CRIMINAL CASES – GENERAL (FORMER
RULE 1329 RENUMBERED AS RULE 1402 EFF. JANUARY 1, 2004)

RULE 1403 – FEE SCHEDULE FOR APPOINTED CRIMINAL CASES – COMPLEX
FELONY (FORMER RULE 1330, RENUMBERED AS RULE 1403 EFF.
JANUARY 1, 2004)

RULE 1404 – FEE SCHEDULE FOR APPOINTED APPEALS CASES (FORMER
RULE 1341, RENUMBERED AS RULE 1404, EFF. JANUARY 1, 2004)

RULE 1405 – FEE SCHEDULE FOR APPOINTED CIVIL AND FAMILY LAW
CASES (FORMER RULE 1417, RENUMBERED AS RULE 1405 EFF. JANUARY
1, 2004)

RULE 1410 - ATTORNEY FEE PAYMENTS - GENERAL

RULE 1411 (EFF. JULY 1, 1998. AMENDED EFF. JANUARY 1, 2004)

RULE 1412 (EFF. JULY 1, 1998.)

RULE 1413 (AS AMENDED EFF. JANUARY 1, 2004)

RULE 1414 (EFF. AS AMENDED JULY 1, 2001. AS AMENDED EFF. JANUARY 1,
2003.)

RULE 1415 – ORDINARY FEES (EFF. JANUARY 1, 2003 AS AMENDED EFF.
JANUARY 1, 2004)

RULE 1416 – EXTRAORDINARY ATTORNEY FEES (EFF. JANUARY 1, 2003.
AS AMENDED EFF. JANUARY 1, 2004)

~~RULE 1417 – FEE SCHEDULE FOR APPOINTED CIVIL AND FAMILY LAW CASES~~
~~(EFF. JANUARY 1, 2003) (RENUMBERED AS RULE 1405, EFF. JANUARY~~
~~1, 2004.~~

RULE 1418 – DETERMINATION OF REASONABLE COMPENSATION AND
NECESSARY EXPENSES FOR PRIVATE COUNSEL (AS AMENDED EFF.
JANUARY 1, 2003. (FORMER RULE 1450.2, RENUMBERED AS RULE 1418.
EFF. JANUARY 1, 2004)

RULE 1419 – COUNSEL IN DEATH PENALTY/LWOP CASES (FORMER RULE
1450.3, RENUMBERED AS RULE 1419 AND AMENDED EFF JANUARY 1,
2004)

RULE 1420 - TORT CASE INVOLVING A MINOR, INSANE OR INCOMPETENT
PERSON (EFF. AS AMENDED JULY 1, 2000.)

- RULE 1421 - SETTLEMENT MORE THAN TWO WEEKS PRIOR TO ACTION
BEING ASSIGNED TO A DEPARTMENT FOR TRIAL (EFF. AS AMENDED
JULY 1, 2000.)
- RULE 1422 - SETTLEMENT WITHIN TWO WEEKS OF OR DURING TRIAL OR
SETTLEMENT AFTER THE FILING OF ESPONDENT'S BRIEF ON APPEAL OR
AFFIRMANCE (EFF. AS AMENDED JULY 1, 2000.)
- RULE 1424 - COMPUTATION OF FEES (EFF. JULY 1, 1998.)
- RULE 1425 - APPLICATION (EFF. JULY 15, 1985.)
- RULE 1430 - CONTRACT (EFF. JULY 1, 1998.)
- RULE 1431 - DEFAULT ACTION ON NOTE OR CONTRACT, EXCLUSIVE OF
COSTS (EFF. JULY 1, 1998.)
- RULE 1432 - CONTESTED ACTION ON NOTE OR CONTRACT, EXCLUSIVE OF
COSTS (EFF. JULY 1, 1998.)
- RULE 1433 - FORECLOSURE
- RULE 1433.1 (EFF. JULY 1, 1998.)
- RULE 1433.2 (EFF. JULY 1, 1998.)
- RULE 1434 - IN DISSOLUTION, LEGAL SEPARATION OR NULLITY ACTION
(EFF. JULY 1, 1998.)
- RULE 1434.1 (EFF. JULY 1, 1998.)
- RULE 1434.2 (EFF. JULY 1, 1998.)
- RULE 1434.3 (EFF. JULY 1, 1998.)
- RULE 1434.4 (EFF. JULY 1, 1998.)
- RULE 1434.5 (EFF. AS AMENDED JULY 1, 2000.)
- ~~RULE 1440 – EXTRAORDINARY FEES (EFF. JULY 1, 1998.)~~ (DELETED EFF.
JANUARY 1, 2004)
- ~~RULE 1450 – TYPES OF COUNSEL~~ (DELETED EFF. JANUARY 1, 2004)
- ~~RULE 1450.1 – COURT APPOINTED COUNSEL~~ (DELETED EFF. JANUARY 1,
2004)
- ~~RULE 1450.2 – DETERMINATION OF REASONABLE COMPENSATION AND~~
~~NECESSARY EXPENSES FOR PRIVATE COUNSEL (AS AMENDED EFF.~~
~~JANUARY 1, 2003.)~~ (RENUMBERED AS RULE 1418, EFF. JANUARY 1, 2004)
- ~~RULE 1450.3 – COUNSEL IN DEATH PENALTY/LWOP CASES (EFF AS~~
~~AMENDED JULY 1, 2000)~~ (RENUMBERED AS RULE 1419 AND AMENDED
EFF. JANUARY 1, 2004)
- RULE 1451 APPOINTMENTS OF INVESTIGATORS, LEGAL RUNNERS AND
EXPERTS (AS AMENDED EFF. JANUARY 1, 2003. AS AMENDED EFF.
JANUARY 1, 2004)
- RULE 1460 – INVESTIGATOR, LEGAL RUNNER AND EXPERT FEES (AS
AMENDED EFF. JANUARY 1, 2004)
- RULE 1460.1 - CLAIMS FOR PAYMENT (EFF. AS AMENDED JULY 1, 2001. AS
AMENDED EFF. JANUARY 1, 2004)
- RULE 1460.2 – INVESTIGATORS AND LEGAL RUNNER FEE SCHEDULES (EFF.
AS AMENDED JULY 1, 2000. AS AMENDED EFF. JANUARY 1, 2004)
- RULE 1460.3 - EXPERT FEE SCHEDULES (AS AMENDED EFF. JANUARY 1,
2004)

RULE 1460.4 – MEDICAL COMMISSION SERVICE EXPERTS (EFF JANUARY 1, 2001)

RULE 1460.5 – MEDICAL EXPERTS FEE SCHEDULE (EFF JANUARY 1, 2001 AS AMENDED EFF. JANUARY 1, 2004)

RULE 1460.6 – PRIOR APPROVAL (EFF. AS AMENDED JULY 1, 2001)

RULE 1460.7 – EXTRAORDINARY EXPERT FEES (AS AMENDED EFF. JANUARY 1, 2003.)

RULE 1460.8 – INVESTIGATORS AND EXPERTS FEES IN CAPITAL CASES (EFF JANUARY 1, 2001)

RULE 1460.9 – SUBPOENAED EXPERT TESTIMONY (AS AMENDED EFF. JANUARY 1, 2004)

RULE 1461 - REVIEW COMMITTEE (EFF. AS AMENDED JULY 1, 2000.)

RULE 1462 – APPOINTED COUNSEL (AS AMENDED EFF. JANUARY 1, 2004)

RULE 1464 – REIMBURSEMENT ORDER (EFF. AS AMENDED JULY 1, 2000.)

RULE 1480 - COLLECTION (EFF. JULY 1, 1998.)

RULE 1490 (EFF. JULY 1, 1998.)

CHAPTER 15 - FAMILY LAW RULES

RULE 1510 CHANGE OF MEDIATOR OR EVALUATOR (EFF. JANUARY 1, 1999. (AS AMENDED EFF JULY 1, 2003)

RULE 1511 –MEDIATION (EFF JULY 1, 2000, RENUMBERED EFF JULY 1, 2003)

RULE ~~1510.4~~ 1511.1 MEDIATION PROCEDURES (EFF. AS AMENDED JANUARY 1, 2003. RENUMBERED EFF JULY 1, 2003)

RULE 1511.2 EX PARTE COMMUNICATION (RENUMBERED EFF JULY 1, 2003)

RULE 1512.1 – QUALIFICATIONS AND REQUIREMENTS (EFF JULY 1, 2003)

RULE 1512.2 – EX PARTE COMMUNICATION (EFF JULY 1, 2003)

RULE 1512.3 – PAYMENT (EFF JULY 1, 2003)

RULE 1512.4 – COMPLIANCE WITH RULES OF COURT (EFF JULY 1, 2003)

RULE 1513 – GUIDELINES FOR APPOINTMENT OF COUNSEL FOR MINORS (EFF JULY 1, 2003)

RULE 1513(A) REQUEST FOR APPOINTMENT OF COUNSEL (EFF JULY 1, 2003)

RULE 1513(B) GUIDELINES FOR APPOINTMENT (EFF JULY 1, 2003)

RULE 1513 (C) CONTENTS OF ORDER FOR APPOINTMENT OF COUNSEL (EFF JULY 1, 2003)

RULE 1513 (D) TWO OR MORE CHILDREN (EFF JULY 1, 2003)

RULE 1514 GUIDELINES FOR DETERMINE PAYMENT OF APPOINTED COUNSEL FOR MINORS (EFF JULY 1, 2003)

RULE 1514(A) GENERAL GUIDELINES (EFF JULY 1, 2003)

RULE 1514(B) DETERMINATION OF ABILITY TO PAY (EFF JULY 1, 2003)

RULE 1514(C) PAYMENT OF APPOINTED COUNSEL (EFF JULY 1, 2003)

RULE 1515 – EX PARTE PROCEDURE

RULE 1515.1 EX PARTE NOTICE (EFF JULY 1, 2003)

RULE 1516 – FAMILY LAW COURT COMMUNICATION PROTOCOL (EFF JULY 1, 2003)

CHAPTER 16 - JUVENILE RULES

- RULE 1610 - SANCTIONS (EFF. JULY 1, 1998.)
- RULE 1620 - TIME FOR FILING REPORTS IN JUVENILE PROCEEDINGS (EFF. JULY 1, 1998.)
- RULE 1630 - CALENDAR CALL (EFF. JULY 1, 1998.)
- RULE 1640 - CONTINUANCES (EFF. JULY 1, 1998.)
- RULE 1640.1 - WRITTEN MOTION FOR CONTINUANCE (EFF. JULY 1, 1998.)
- RULE 1640.2 - ORAL MOTION FOR CONTINUANCE (EFF. JULY 1, 1998.)
- RULE 1650 - MOTIONS (EFF. JULY 1, 1998.)
- RULE 1650.1 - NOTICE (EFF. JULY 1, 1998.)
- RULE 1650.2 - RESPONSE (EFF. JULY 1, 1998.)
- RULE 1650.3 - REPLY (EFF. JULY 1, 1998.)
- RULE 1650.4 - MOTION UNDER § 700.1 (EFF. JULY 1, 1998.)
- RULE 1660 - ORDER SHORTENING TIME (EFF. JULY 1, 1998.)
- RULE 1670 - PRETRIAL SETTLEMENT CONFERENCES IN DEPENDENCY MATTERS (EFF. JULY 1, 1998.)
- RULE 1670.1 - PRETRIAL AT-ISSUE MEMORANDUM (EFF. JULY 1, 1998.)
- RULE 1670.2 - COURT PROCEDURE (EFF. JULY 1, 1998.)
- RULE 1670.3 - ORDER RE: PRETRIAL AT-ISSUE MEMORANDUM (EFF. JULY 1, 1998.)
- RULE 1670.4 - MODIFICATION OF ORDER RE: PRETRIAL AT-ISSUE MEMORANDUM (EFF. JULY 1, 1998.)
- RULE 1670.5 - CONTINUANCES (EFF. JULY 1, 1998.)
- RULE 1670.6 - REQUIREMENT OF JURISDICTIONAL/DISPOSITIONAL REPORT (EFF. JULY 1, 1998.)
- RULE 1670.7 - PRETRIAL SETTLEMENT CONFERENCE PRIOR TO CONTESTED § 366.26 HEARING (EFF. JULY 1, 1998.)
- RULE 1680 - PRETRIAL DISCOVERY IN PROCEEDINGS UNDER SECTION 600 ET SEQ (EFF. JULY 1, 1998.)
- RULE 1680.1 - DISCLOSURE OF INFORMATION UNDER PENAL CODE SECTION 1054 ET SEQ. (EFF. JULY 1, 1998.)
- RULE 1689 – JUVENILE COURT COMMUNICATION PROTOCOL (EFF JULY 1, 2003)
- RULE 1690 - RELEASE OF INFORMATION RELATING TO JUVENILES (EFF. JULY 1, 1998.)
- RULE 1690.1 - OBJECTION TO REQUEST FOR RELEASE OF INFORMATION (EFF. JULY 1, 1998.)
- RULE 1690.2 - REVIEW BY COURT (EFF. JULY 1, 1998.)
- RULE 1691 - CLIENT COMPLAINTS IN DEPENDENCY MATTERS (EFF. JULY 1, 1998.)
- RULE 1692 - COMPETENCY OF ATTORNEYS REPRESENTING PARTIES IN JUVENILE DEPENDENCY AND DELINQUENCY MATTERS (EFF. JULY 1, 1998.)

- RULE 1692.1 - TIME FOR SUBMITTING INITIAL CERTIFICATION OF COMPETENCY WITH THE COURT (EFF. JULY 1, 1998.)
- RULE 1692.2 - ATTORNEYS NOT MEETING THE MINIMUM STANDARDS ON THE EFFECTIVE DATE OF THIS RULE (EFF. JULY 1, 1998.)
- RULE 1692.3 - ATTORNEYS CERTIFIED IN OTHER COUNTIES (EFF. JULY 1, 1998.)
- RULE 1692.4 - MINIMUM STANDARDS OF COMPETENCY (EFF. JULY 1, 1998.)
- RULE 1692.5 - RECERTIFICATION EVERY THREE YEARS (EFF. JULY 1, 1998.)
- RULE 1692.6 - TRAINING AND/OR EDUCATION REQUIRED FOR RECERTIFICATION (EFF. JULY 1, 1998.)
- RULE 1692.7 - DECERTIFICATION (EFF. JULY 1, 1998.)
- RULE 1692.8 – MAXIMUM CASELOAD (EFF. JULY 1, 2002.)
- RULE 1693 - CHILD ADVOCACY PROGRAM: COURT APPOINTED SPECIAL ADVOCATE/GUARDIAN AD LITEM (EFF. JULY 1, 1998.)
- RULE 1693.1 - DUTIES OF CASA/GAL VOLUNTEERS (EFF. JULY 1, 1998.)
- RULE 1693.2 - APPEALS/GRIEVANCE PROCEDURE FOR CASA/GAL VOLUNTEERS (EFF. JULY 1, 1998.)
- RULE 1693.3 - REFERRAL OF CASE TO CASA/GAL PROGRAM; APPOINTMENT OF CASA/GAL VOLUNTEER (EFF. JULY 1, 1998.)
- RULE 1693.4 - CHILD ADVOCACY ADVISORY COUNCIL (EFF. JULY 1, 1998.)
- RULE 1693.5 - CONFIDENTIALITY OF SBCAPI RECORDS (EFF. JULY 1, 1998.)

CHAPTER 17 – RESERVED

CHAPTER 18 - ELECTRONIC FILINGS

- RULE 1800 - ELECTRONIC FILING PILOT PROGRAM (EFF. JANUARY 1, 2000)
- RULE 1810 - DEFINITIONS (EFF. JANUARY 1, 2000)
- RULE 1820 - ELECTRONIC FILING PARTICIPATION (EFF. JANUARY 1, 2000)
- RULE 1830 - FAX FILINGS (FACSIMILE TRANSFER TO COURT) (EFF. JANUARY 1, 2000)
- RULE 1840 - ELECTRONIC FILING PROCESS (EFF. JANUARY 2, 2000)
- RULE 1840(A) - DATE/TIME OF FILING (EFF. JANUARY 1, 2000)
- RULE 1840 (B) - RECEIPT OF DATA (EFF. JANUARY 1, 2000)
- RULE 1840 (C) - ERRORS OR MALFUNCTIONS (EFF. JANUARY 1, 2000)
- RULE 1840 (D) - ACCEPTANCE OF FILING BY EFS (EFF. JANUARY 1, 2000)
- RULE 1840 (D)(1) - REJECTED FILINGS (EFF. JANUARY 1, 2000)
- RULE 1840 (D)(2) - ERRORS OR MALFUNCTION (EFF. JANUARY 1, 2000)
- RULE 1840 (E) - JUDICIAL COUNCIL FORMS (CRC 982.9) (EFF JANUARY 1, 2000)
- RULE 1840 (F) - ENDORSEMENT
- RULE 1840(F)(1) (EFF. JANUARY 1, 2000)
- RULE 1840 (F)(2) (EFF. JANUARY 1, 2000)
- RULE 1840 (G) - SUMMONS (CCP 412.20, 415.10) (EFF. JANUARY 1, 2000)
- RULE 1840 (H) (EFF. JANUARY 1, 2000)
- RULE 1840 (I) - INQUIRY/VIEWING (EFF. JANUARY 1, 2000)
- RULE 1840 (J) - CERTIFICATION (EFF. JANUARY 1, 2000)

RULE 1840 (K) - SIGNED DOCUMENTS

RULE 1840 (K)(1) - POSSESSION OF SIGNED DOCUMENT (EFF. JANUARY 1, 2000)

RULE 1840 (K)(2) - DEMAND FOR SIGNED DOCUMENT (EFF. JANUARY 1, 2000)

RULE 1840 (K)(3) - EXAMINATION OF SIGNED DOCUMENT (EFF. JANUARY 1, 2000)

RULE 1840 (L) - ATTACHMENT (EFF. JANUARY 1, 2000)

RULE 1840 (M) – ELECTRONICALLY MAILED SERVICES (EFF. JANUARY 1, 2000)

RULE 1850 - DOCUMENT FORMAT (EFF. JANUARY 1, 2000)

RULE 1860 - ELECTRONIC FILING SYSTEM INQUIRIES (EFF. JULY 1, 1998.)

CHAPTER 19 - MISCELLANEOUS

RULE 1900 - COURTROOM DECORUM (EFF. JULY 1, 1998.)

RULE 1910 - APPOINTMENT OF MEDICAL EXAMINERS AND PSYCHIATRISTS (EFF. JULY 1, 1998.)

RULE 1920- DEPOSITIONS (EFF. JULY 1, 1998.)

RULE 1921 - NOTICE OF DEPOSITION (EFF. JULY 1, 1998.)

APPENDIX I - PROBATE RULES

PART ONE - GENERAL PROCEDURAL GUIDE

RULE 101 - WRITTEN POLICY MEMORANDA (REV. DEC. 1993.)

RULE 102 - APPROVED MATTERS (AS AMENDED EFF JANUARY 1, 2004.)

~~RULE 103 - COURTROOM PROCEDURE (EFF. JULY 1, 1998.) (DELETED, EFF. JANUARY 1, 2004)~~

RULE 104 - ATTORNEYS AND PARTIES TO ANNOUNCE THEIR NAMES (EFF. JULY 1, 1998.)

RULE 105 - COMMISSIONERS AND TEMPORARY JUDGES (EFF. JULY 1, 1998.)

RULE 106 - CONTINUANCE TO PERMIT FILING OF CONTEST OR OBJECTION (EFF. JULY 1, 1998.)

RULE 107 - CONTESTED MATTERS (AS AMENDED EFF. JANUARY 1, 2003.)

PART TWO - FORMS, NOTICES, AFFIDAVITS, AND DECLARATIONS

RULE 201 - FORMS AVAILABLE AT CLERK'S OFFICE (REV. DEC. 1993. AS AMENDED EFF. JANUARY 1, 2003.)

RULE 202 - NEWSPAPERS OF GENERAL CIRCULATION (EFF. JULY 1, 1998.)

RULE 203 - NOTICE RE SPECIAL LETTERS (EFF. JULY 1, 1998.)

RULE 204 - PROBATE HEARING ONCE NOTICED CANNOT BE ADVANCED (EFF. JULY 1, 1998.)

RULE 205 - NOTICE - REQUISITE MAILING OR DELIVERY; UNKNOWN ADDRESS (EFF. JULY 1, 1998.)

PART THREE - EXECUTORS AND ADMINISTRATORS

RULE 302 - SPECIAL ADMINISTRATION (EFF. JULY 1, 1998.)

RULE 304 - PUBLIC ADMINISTRATOR (REV. DEC. 1993.)

PART FOUR - BONDS

RULE 401 - BOND ON SALE OF REAL ESTATE (REV. DEC. 1993.)

RULE 402 - BOND ON PETITION FOR AUTHORITY TO BORROW MONEY (REV. DEC. 1993.)

RULE 404 - PRELIMINARY DISTRIBUTION BOND (REV. DEC. 1993.)

RULE 405 - NONRESIDENT PERSONAL REPRESENTATIVE (REV. DEC. 1993.)

PART FIVE - INDEPENDENT ADMINISTRATION

RULE 501 - PRELIMINARY DISTRIBUTION (REV. DEC. 1993.)

RULE 502 - FINAL REPORT AND PETITION FOR FINAL DISTRIBUTION (REV. DEC. 1993.)

PART SIX - PETITION, MOTIONS, INVENTORIES, AND ORDERS

RULE 601 - CAPTIONS (REV. DEC. 1993.)

RULE 602 - USE OF PRINTED FORMS (AS AMENDED EFF. JANUARY 1, 2003.)

RULE 603 - FILING OF PLEADINGS (EFF. JULY 1, 1998.)

RULE 604 - ALLEGATIONS IN PETITION RE HEIRS (REV. DEC. 1993.)

RULE 605 - COMPLETE ADDRESS IN PETITION OR REPORT (REV. DEC. 1993.)

RULE 606 - LIMITATIONS ON USE OF PETITIONS FOR INSTRUCTIONS (EFF. JULY 1, 1998.)

RULE 607 - EX PARTE MATTERS (AS AMENDED EFF. JANUARY 1, 2003. AS AMENDED JULY 1, 2003)

RULE 608 - EX PARTE ORDERS MUST BE COMPLETE (REV. DEC. 1993.)

RULE 609 - EX PARTE ORDERS WILL NOT BE GRANTED UNLESS SPECIAL NOTICE IS WAIVED (EFF. JULY 1, 1998.)

RULE 610 - DESCRIPTION OF REAL PROPERTY (EFF. JULY 1, 1998.)

RULE 611 - SPECIFICALLY BEQUEATHED PROPERTY (EFF. JULY 1, 1998.)

RULE 612 - REAL PROPERTY DISTRIBUTION ORDERS (EFF. JULY 1, 1998.)

RULE 613 - FAMILY ALLOWANCE: ORDERS FOR CONTINUING PAYMENTS MUST STATE TERMINATION DATE (EFF. JULY 1, 1998.)

RULE 614 - PROBATE ORDERS (EFF. JULY 1, 1998. AS AMENDED, EFF. JANUARY 1, 2004)

RULE 615 - NUNC PRO TUNC ORDERS CORRECTING CLERICAL ERRORS (EFF. JULY 1, 1998.)

RULE 617 - DEATH OR MISSING PERSONS (EFF. JULY 1, 1998.)

PART SEVEN - CREDITORS' CLAIMS

RULE 702 - ALLOWANCE OR REJECTION OF CLAIMS (EFF. JULY 1, 1998.)

RULE 703 - FUNERAL CLAIMS (EFF. JULY 1, 1998.)

RULE 704 - CLAIMS OF PERSONAL REPRESENTATIVES AND THEIR
ATTORNEYS (EFF. JULY 1, 1998.)

RULE 705 - DISTRIBUTION (EFF. JULY 1, 1998.)

PART EIGHT - SALES

RULE 801 - CONDOMINIUMS, COMMUNITY OR COOPERATIVE APARTMENTS
(EFF. JULY 1, 1998.)

RULE 802 - SALE OF REAL AND PERSONAL PROPERTY AS A UNIT (EFF. JULY
1, 1998.)

RULE 803 - TANGIBLE PERSONAL PROPERTY (EFF. JULY 1, 1998.)

RULE 804 - SALES OF DEPRECIATING AND PERISHABLE PROPERTY (EFF.
JULY 1, 1998.)

RULE 805 - SALES OF SECURITIES (EFF. JULY 1, 1998.)

RULE 806 - BROKER'S COMMISSIONS (EFF. JULY 1, 1998.)

RULE 807 - COURT CONFIRMATION OF PRIVATE SALES (EFF. JULY 1, 1998.)

PART NINE - ACCOUNTS, FEES AND DISTRIBUTIONS

RULE 901 - ACCOUNTING REVIEW DATES (AS AMENDED EFF. JANUARY 1,
2003. AS AMENDED EFF JULY 1, 2003)

RULE 902 - WAIVER OF ACCOUNTING (EFF. JULY 1, 1998.)

RULE 903 - ATTORNEY'S SIGNATURE (EFF. JULY 1, 1998.)

RULE 904 - COMPENSATION MUST BE STATED (AS AMENDED EFF. JANUARY
1, 2003. AS AMENDED JULY 1, 2003)

RULE 905 - REPORT ACTIONS RE CREDITORS (EFF. JULY 1, 1998.)

RULE 906 - DESCRIPTION OF ASSETS (EFF. JULY 1, 1998.)

RULE 907 - MANNER OF ASSET DISTRIBUTION (EFF. JULY 1, 1998.)

RULE 908 - INVENTORIES AND ACCOUNTINGS (ESTATES & TRUSTS) (EFF.
JANUARY 1, 2000)

RULE 909 COSTS GENERALLY NOT ALLOWED FOR COUNSEL OR
ADMINISTRATOR (EFF JULY 1, 2003)

PART TEN - DISPOSITION WITHOUT PROBATE AND PETITIONS TO SET ASIDE SMALL ESTATES

RULE 1001 PETITION TO SET ASIDE SMALL ESTATES (EFF. JULY 1, 1998.)

PART ELEVEN - FAMILY PROTECTION

RULE 1101 – HOMESTEADS (EFF. JULY 1, 1998.)

RULE 1102 - PETITION FOR FAMILY ALLOWANCE (EFF. JULY 1, 1998.)

PART TWELVE - PETITIONS TO SET ASIDE SPOUSAL PROPERTY

RULE 1201 - REQUIRED ALLEGATION IN SUPPORT OF CLAIMED PROPERTY
AS PASSING OR BELONGING TO SURVIVING SPOUSE (AS AMENDED EFF.
JANUARY 1, 2003.)

PART THIRTEEN - GUARDIANSHIPS OF MINORS

RULE 1301 - APPOINTMENT OF GUARDIAN OF MINOR (EFF. JULY 1, 1998.)

RULE 1302 - SUPPORTING DOCUMENTATION (AS AMENDED EFF. JANUARY
1, 2003.)

RULE 1303 - TEMPORARY APPOINTMENT OF GUARDIAN OF MINOR (EFF.
JULY 1, 1998.)

RULE 1304 - ORDER PRESCRIBING AND DISPENSING NOTICE RE
APPOINTMENT GUARDIAN OF MINOR (EFF. JULY 1, 1998.)

RULE 1305 - GUARDIANSHIP INVESTIGATIONS (EFF. JULY 1, 1998.)

RULE 1306 - CONSULTATION WITH OTHER DEPARTMENTS RE HABEAS
CORPUS OR CUSTODY PROCEEDINGS (EFF. JULY 1, 1998.)

RULE 1307 - GUARDIANS OF THE PERSON WHEN ADOPTION PROCEEDINGS
ARE PENDING (EFF. JULY 1, 1998.)

RULE 1308 - INCREASING AND DECREASING BOND OF GUARDIAN (EFF.
JULY 1, 1998.)

RULE 1309 - DUTIES OF GUARDIAN - LIABILITY OF PARENTS TO SUPPORT
CHILD (EFF. JULY 1, 1998.)

RULE 1310 - INVESTMENTS BY GUARDIANS (EFF. JULY 1, 1998.)

RULE 1311 - ACCOUNTS OF GUARDIANSHIP (AS AMENDED EFF. JANUARY 1,
2003. AS AMENDED EFF JULY 1, 2003)

RULE 1312 - DUTIES AND LIABILITIES (EFF. JULY 1, 1998.)

RULE 1313 - REVIEW HEARINGS (EFF. JULY 1, 1998.)

RULE 1314 - ANNUAL RENEWAL OF GUARDIANSHIP LETTERS (EFF. JULY 1,
1998.)

RULE 1315 – GUIDELINES FOR APPOINTMENT OF COUNSEL IN
GUARDIANSHIPS OF MINORS (EFF JULY 1, 2003)

PART FOURTEEN - PROBATE CONSERVATORSHIPS

RULE 1400 - PETITIONS (EFF. JULY 1, 1998.)

RULE 1401 - APPOINTMENT OF COURT INVESTIGATOR (EFF. JULY 1, 1998.)

RULE 1402 - ATTORNEYS FOR CONSERVATEES (EFF. JULY 1, 1998.)

RULE 1403 - RESPONSIBILITIES OF THE CONSERVATOR (EFF. JULY 1, 1998.)

RULE 1404 - INVENTORY AND APPRAISEMENT OF SUCCESSOR
CONSERVATOR (EFF. JULY 1, 1998.)

RULE 1405 - SUBSTITUTED JUDGMENT - CREATION OF TRUSTS (EFF. JULY 1,
1998.)

RULE 1406 - ACCOUNTINGS (EFF. JANUARY 1, 2000. AS AMENDED EFF JULY
1, 2003)

RULE 1407 - COURT INVESTIGATOR REVIEW/FEEES (AS AMENDED EFF.
JANUARY 1, 2003.)

RULE 1408 - CHANGE OF RESIDENCE OF THE CONSERVATEE (EFF. JULY 1,
1998.)

RULE 1409 - INDEPENDENT POWERS (EFF. JULY 1, 1998.)

RULE 1410 - TERMINATION (EFF. JULY 1, 1998.)

RULE 1411 - CHANGE OF VENUE (EFF. JULY 1, 1998.)

RULE 1412 - NOTICE OF HEARING ON EX PARTE PETITION FOR
APPOINTMENT OF TEMPORARY CONSERVATOR (EFF. JULY 1, 1998.)

RULE 1413 – CONFIDENTIAL INCOME TAX RETURNS (EFF. JANUARY 1, 2000)

PART FIFTEEN - TRUSTS

RULE 1501 - BENEFICIARIES TO BE LISTED IN PETITION (EFF. JULY 1, 1998.)

TABLE OF CONTENTS

CHAPTER 1 - ADMINISTRATIVE RULES

PART 1 - INTRODUCTION.....	PAGE 1
RULE 111 - TITLE OF NEW ENTITY PASSAGE OF SENATE CONSTITUTIONAL AMENDMENT (SCA 4), PROP 220.....	PAGE 1
RULE 112 - EFFECTIVE DATE.....	PAGE 1
RULE 113 METHOD OF ADOPTION.....	PAGE 1
RULE 114 EFFECT OF THE RULES AND CITATION OF RULES	PAGE 1
RULE 115 CONSTRUCTION AND APPLICATION OF RULES.....	PAGE 1
PART 2 - DESIGNATION OF JUDGES.....	PAGE 1
RULE 120 JUDICIAL RESOURCES	PAGE 1
PART 3 - DISTRICTS OF THE COURT	PAGE 2
RULE 130 DISTRICTS DEFINED.....	PAGE 2
RULE 131	PAGE 2
RULE 132	PAGE 3
RULE 132.2	PAGE 3
RULE 132.3	PAGE 3
RULE 133	PAGE 3

CHAPTER 2 - ADMINISTRATIVE ORGANIZATION

PART 1 PRESIDING JUDGE.....	PAGE 5
RULE 210 DUTIES.....	PAGE 5
RULE 211 ELECTION.....	PAGE 5
RULE 212 NOMINATION	PAGE 5
RULE 212.1	PAGE 5
RULE 212.2	PAGE 5
RULE 212.3	PAGE 5
RULE 213 REMOVAL/VACANCY.....	PAGE 6
PART 2 - MEETINGS.....	PAGE 6
RULE 220	PAGE 6
RULE 220.1	PAGE 6
RULE 220.2	PAGE 6
RULE 221	PAGE 6
PART 3 - EXECUTIVE COMMITTEE.....	PAGE 7

RULE 230 COMPOSITION	PAGE 7
RULE 231 DUTIES	PAGE 7
RULE 231.1	PAGE 7
RULE 231.2	PAGE 8
RULE 231.3	PAGE 8
RULE 231.4	PAGE 8
RULE 231.5	PAGE 8
RULE 231.6	PAGE 8
RULE 232 TERM OF OFFICE	PAGE 8
RULE 233 QUORUM	PAGE 9
RULE 234 EFFECT OF ACTION OF THE EXECUTIVE COMMITTEE.....	PAGE 9
 PART 4 - COURT EXECUTIVE OFFICER.....	 PAGE 10
 RULE 240 SELECTION	 PAGE 10
RULE 241 STATUTORY RESPONSIBILITIES	PAGE 10
RULE 241.1 TRANSFER OF POWERS, DUTIES AND RESPONSIBILITIES FROM THE COUNTY CLERK TO THE COURT EXECUTIVE OFFICER	 PAGE 10
RULE 242 DUTIES	PAGE 11
RULE 242.1	PAGE 11
RULE 242.2	PAGE 12
RULE 242.3	PAGE 12
RULE 242.4	PAGE 12
RULE 242.5	PAGE 12
RULE 242.6	PAGE 12
RULE 243 EMPLOYMENT STATUS	PAGE 12
 PART 5 - RESERVED	
 PART 6 - COURT COMMISSIONER.....	 PAGE 14
 RULE 260 APPOINTMENT	 PAGE 14
RULE 260.1 PROCEDURE FOR APPOINTMENT	PAGE 14
RULE 261 QUALIFICATIONS	PAGE 14
RULE 263 GENERAL AUTHORITY	PAGE 14
 PART 7 - DISCIPLINARY PROCEDURES FOR COURT EXECUTIVE OFFICER AND COURT COMMISSIONERS	 PAGE 15
RULE 270 REPRIMAND OF SUPERIOR COURT COMMISSIONER OR SUPERIOR COURT EXECUTIVE OFFICER.....	 PAGE 15
RULE 271 COMPLAINTS AGAINST COMMISSIONERS	PAGE 15
RULE 272 DISCIPLINARY ACTION AGAINST COURT COMMISSIONER AND COURT EXECUTIVE OFFICER	 PAGE 15
 PART 8 - REPEALED	

CHAPTER 3 - DISTRIBUTION OF BUSINESS

RULE 310 DISTRIBUTION OF BUSINESS BY PRESIDING JUDGE	PAGE 16
RULE 311 DIRECT CALENDARING OF CIVIL CASES.....	PAGE 16
RULE 311.1 ASSIGNMENT TO JUDICIAL OFFICER.....	PAGE 16
RULE 311.2 CATEGORICAL DEPARTMENT CALENDARS	PAGE 16
RULE 311.3 ALL-PURPOSE ASSIGNMENT TO JUDICIAL OFFICER	PAGE 16
RULE 320 ASSIGNMENT OF BUSINESS	PAGE 16
RULE 321 CIVIL DEFAULTS	PAGE 16
RULE 321.1 SETTING HEARINGS	PAGE 16
RULE 321.2 FORMS (EXCEPTIONS)	PAGE 16
RULE 321.3 FORMS	PAGE 17
RULE 330 TELEPHONIC APPEARANCES	PAGE 17
RULE 330.1 PRIOR APPROVAL	PAGE 17
RULE 330.2 NOTIFICATION TO THE COURT	PAGE 17
RULE 330.3 SCHEDULED TELEPHONIC APPEARANCE.....	PAGE 17
RULE 330.4 OBLIGATION FOR PLACEMENT OF CALL	PAGE 17
RULE 330.5 COST OF TELEPHONE CALL	PAGE 17
RULE 330.6 NON-APPEARANCE BY TELEPHONE CALL	PAGE 18
RULE 330.7 TRAILING OR RECALLED STATUS.....	PAGE 18
RULE 331 UNCONTESTED MATTERS	PAGE 18
RULE 332 APPELLATE DIVISION	PAGE 18

CHAPTER 4 - CIVIL CASE MANAGEMENT

RULE 400 CIVIL CASES SUBJECT TO THE DELAY REDUCTION ACT	PAGE 19
RULE 401 POLICY	PAGE 19
RULE 402 DEFINITION	PAGE 19
RULE 402.1 EXCEPTIONAL CASES	PAGE 19
RULE 403 ASSIGNED JUDGES	PAGE 19
RULE 404 DESIGNATION	PAGE 19
RULE 408 CASE MANAGEMENT CONFERENCE.....	PAGE 19
RULE 409 ARBITRATION OR ALTERNATIVE TRIAL.....	PAGE 20
RULE 410 MANDATORY SETTLEMENT CONFERENCE (MSC)	PAGE 20
RULE 411 TRIAL MANAGEMENT CONFERENCE (TMC)	PAGE 20
RULE 412 EXCEPTIONAL CASES	PAGE 20
RULE 413 UNINSURED MOTORIST CLASS	PAGE 21
RULE 415 TRIAL READY LIST	PAGE 21
RULE 416 DUTY OF COUNSEL AS TO TRIAL DATE ASSIGNED.....	PAGE 21
RULE 417 UNCONTESTED CALENDARS	PAGE 21
RULE 418 STATEMENT OF POLICY RE CONTINUANCES OF ANY MATTER	PAGE 21
RULE 418.1 CIVIL CASES	PAGE 23
RULE 418.2 CIVIL CASES, LAW AND MOTION, AND VOLUNTARY SETTLEMENT CONFERENCE POLICY	PAGE 23

RULE 419 CIVIL COURT COMMUNICATION PROTOCOL	PAGE 23
RULE 420 CASES REMOVED FROM OTHER COURTS.....	PAGE 23

CHAPTER 5 - CIVIL LAW AND MOTION DEPARTMENT

RULE 510 SUBSEQUENT FILING	PAGE 24
RULE 520 MOTION DATE	PAGE 24
RULE 530 JUDICIAL ASSIGNMENTS	PAGE 24
RULE 540 EX PARTE ORDERS AND CIVIL WRITS.....	PAGE 24
RULE 550 CONTINUANCES	PAGE 24
RULE 560 MOTIONS REMOVED FROM CALENDAR	PAGE 25
RULE 591 ORDERS AND JUDGMENTS	PAGE 25
RULE 591.1 MINUTE ORDERS.....	PAGE 25
RULE 591.2 JUDGMENT FORMS	PAGE 25
RULE 592 FAILURE TO OBJECT	PAGE 25
RULE 593 CAPTIONS.....	PAGE 25

CHAPTER 6 - SETTLEMENT CONFERENCES

RULE 610 SETTLEMENT CONFERENCE CALENDARS	PAGE 26
RULE 610.1 VOLUNTARY SETTLEMENT CALENDAR.....	PAGE 26
RULE 610.2 VOLUNTARY SETTLEMENT CONFERENCE RULES.....	PAGE 26
RULE 610.3 MANDATORY SETTLEMENT CALENDAR.....	PAGE 26
RULE 611 PERSONS WHOSE PRESENCE IS REQUIRED.....	PAGE 26
RULE 612 BRIEFS.....	PAGE 26
RULE 613 DISCOVERY	PAGE 27
RULE 614 DEMANDS AND OFFERS	PAGE 27
RULE 615 FAILURE TO ATTEND OR BE PREPARED	PAGE 27
RULE 616 CONTINUANCES	PAGE 27
RULE 617 NOTICE OF SETTLEMENT.....	PAGE 27
RULE 620 ARBITRATION	PAGE 27

CHAPTER 7 - APPLICATION FOR EX PARTE ORDERS

RULE 710 APPLICATIONS.....	PAGE 28
RULE 711 FEE	PAGE 28
RULE 712 FORM.....	PAGE 28
RULE 720 LIMITATIONS ON GRANTING.....	PAGE 28
RULE 730 TO WHOM PRESENTED	PAGE 28
RULE 730.1 IN PARTICULAR.....	PAGE 28
RULE 730.2 CIVIL EX PARTE AND WRITS	PAGE 28
RULE 730.3 CRIMINAL EX PARTE AND WRITS	PAGE 28
RULE 730.4 JUVENILE COURT EX PARTE AND WRITS.....	PAGE 28
RULE 730.5 FAMILY LAW.....	PAGE 29
RULE 730.6 PROBATE.....	PAGE 29
RULE 730.7 MENTAL HEALTH	PAGE 29
RULE 740 PRESENTATION	PAGE 29

RULE 740.1 GUARDIAN AD LITEM	PAGE 29
RULE 740.2 APPLICATION FOR REDUCTION OF UNDERTAKING	PAGE 29
RULE 740.3 SHORTENING OR EXTENDING TIME	PAGE 29
RULE 740.4 APPOINTMENT OF COUNSEL FOR MILITARY PERSONNEL	PAGE 30
RULE 740.5 SUBSTITUTE SERVICE, DOMESTIC	PAGE 30
RULE 740.6 SUBSTITUTE SERVICE, FOREIGN	PAGE 30
RULE 740.7 APPLICATION FOR MONEY DEPOSITED	PAGE 30
RULE 740.8 PROPERTY OTHERWISE DEPOSITED	PAGE 30
RULE 740.9 EXECUTION ON INSTALLMENT ORDER OR JUDGMENT	PAGE 30

CHAPTER 8 – CASES UNDER CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

RULE 800 CEQA DESIGNATION	PAGE 31
---------------------------------	---------

CHAPTER 9 - ECONOMIC LITIGATION

RULE 900 ECONOMIC LITIGATION PROGRAM	PAGE 32
RULE 900.1	PAGE 32

CHAPTER 10 - UNLAWFUL DETAINER ACTIONS

RULE 1000 UNLAWFUL DETAINER ACTIONS	PAGE 33
RULE 1000.1	PAGE 33

CHAPTER 11 - SMALL CLAIMS

CHAPTER 12 - PROBATE

RULE 1200 PROBATE ACTIONS.....	PAGE 35
--------------------------------	---------

CHAPTER 13 - CRIMINAL RULES

RULE 1300	PAGE 36
RULE 1301	PAGE 36
RULE 1303	PAGE 36
RULE 1304	PAGE 36
RULE 1305	PAGE 36
RULE 1306	PAGE 36
RULE 1307	PAGE 36
RULE 1308 CRIMINAL LAW AND MOTION.....	PAGE 36
RULE 1309 P.C. 1538.5 MOTIONS	PAGE 37
RULE 1310 MOTIONS TO QUASH OR TRAVERSE WARRANTS	PAGE 37
RULE 1320 P. C. 995 MOTIONS	PAGE 37
RULE 1321 MOTIONS TO CONTINUE	PAGE 37

RULE 1322 TRANSFER OF CASES	PAGE 37
RULE 1327 VENUE OF ACTIONS	PAGE 38

CHAPTER 14 - COUNSEL/INVESTIGATOR/EXPERT FEES

RULE 1400 APPOINTED ATTORNEY SERVICE FEE SCHEDULE.....	PAGE 43
RULE 1401 FEE SCHEDULE FOR APPOINTED COUNSEL IN JUVENILE COURT	PAGE 43
RULE 1402 FEE SCHEDULE – FOR APPOINTED CRIMINAL CASES	PAGE 43
RULE 1403 FEE SCHEDULE – FOR APPOINTED CRIMINAL CASES	PAGE 45
RULE 1404 FEE SCHEDULE – FOR APPOINTED APPEALS CASES	PAGE 46
RULE 1405 FEE SCHEDULE – FOR APPOINTED CIVIL AND FAMILY LAW	PAGE 48
RULE 1410 ATTORNEY FEE PAYMENTS - GENERAL	PAGE 49
RULE 1411	PAGE 49
RULE 1412	PAGE 49
RULE 1413	PAGE 49
RULE 1414	PAGE 49
RULE 1415 ORDINARY FEES	PAGE 50
RULE 1416 EXTRAORDINARY ATTORNEY FEES	PAGE 50
RULE 1418 DETERMINATION OF REASONABLE COMPENSATION AND NECESSARY EXPENSES FOR PRIVATE COUNSEL	PAGE 51
RULE 1419 COUNSEL IN DEATH PENALTY/LWOP CASES.....	PAGE 51
RULE 1420 TORT CASE INVOLVING A MINOR INSANE OR INCOMPETENT PERSON.....	PAGE 52
RULE 1421 SETTLEMENT MORE THAN TWO WEEKS PRIOR TO ACTION BEING ASSIGNED TO A DEPARTMENT FOR TRIAL	PAGE 52
RULE 1422 SETTLEMENT WITHIN TWO WEEKS OF OR DURING TRIAL OR SETTLEMENT AFTER THE FILING OF RESPONPDENT’S BRIEF ON APPEAL OR AFTER AFFIRMANCE	PAGE 52
RULE 1424 COMPUTATION OF FEES.....	PAGE 52
RULE 1425 APPLICATION.....	PAGE 52
RULE 1430 CONTRACT.....	PAGE 52
RULE 1431 DEFAULT ACTION ON NOTE OR CONTRACT, EXCLUSIVE OF COSTS	PAGE 53
RULE 1432 CONTESTED ACTION ON NOTE OR CONTRACT, EXCLUSIVE OF COSTS.....	PAGE 53
RULE 1433 FORECLOSURE.....	PAGE 53
RULE 1433.1	PAGE 53
RULE 1433.2	PAGE 53
RULE 1434 IN DISSOLUTION, LEGAL SEPARATION OR NULLITY ACTION	PAGE 53
RULE 1434.1	PAGE 53
RULE 1434.2	PAGE 54

57

RULE 1434.3	PAGE 54
RULE 1434.4	PAGE 54
RULE 1434.5	PAGE 54
RULE 1451 APPOINTMENTS OF INVESTIGATORS, LEGAL RUNNERS AND EXPERTS.....	PAGE 55
RULE 1460 INVESTIGATOR, LEGAL RUNNER AND EXPERT FEES	PAGE 56
RULE 1460.1 CLAIMS FOR PAYMENT	PAGE 56
RULE 1460.2 INVESTIGATORS AND LEGAL RUNNER FEE SCHEDULE	PAGE
RULE 1460.3 EXPERT FEES SCHEDULES.....	PAGE 57
RULE 1460.4 MEDICAL COMMISSION SERVICE EXPERTS	PAGE 58
RULE 1460.5 MEDICAL EXPERTS FEE SCHEDULES	PAGE 59
RULE 1460.6 PRIOR APPROVAL	PAGE 59
RULE 1460.7 EXTRAORDINARY EXPERT FEES	PAGE 59
RULE 1460.8 INVESTIGATORS AND EXPERT FEES IN CAPITAL CASES	PAGE 59
RULE 1460.9 SUBPOENAED EXPERT TESTIMONY.....	PAGE 60
RULE 1461 REVIEW COMMITTEE.....	PAGE 60
RULE 1462 APPOINTED COUNSEL.....	PAGE 60
RULE 1464 REIMBURSEMENT ORDER.....	PAGE 60
RULE 1480 COLLECTION	PAGE 60
RULE 1490	PAGE 61

CHAPTER 15 - FAMILY LAW RULES

RULE 1510 CHANGE OF MEDIATOR OR EVALUATOR	PAGE 62
RULE 1511 MEDIATION	PAGE 62
RULE 1511.1 MEDIATION PROCEDURES.....	PAGE 62
RULE 1511.2 EX PARTE COMMUNICATION	PAGE 63
RULE 1512 EVALUATION PROCESS.....	PAGE 63
RULE 1512.1 QUALIFICATIONS AND REQUIREMENTS	PAGE 63
RULE 1512.2 EX PARTE COMMUNICATION	PAGE 63
RULE 1512.3 PAYMENT.....	PAGE 63
RULE 1512.4 COMPLIANCE WITH RULES OF COURT	PAGE 63
RULE 1513 GUIDELINES FOR APPOINTMENT OF COUNSEL FOR MINORS	PAGE 64
RULE 1513(A) REQUEST FOR APPOINTMENT OF COUNSEL	PAGE 64
RULE 1513 (B) GUIDELINES FOR APPOINTMENT	PAGE 64
RULE 1513 (C) CONTENTS OF ORDER FOR APPOINTMENT OF COUNSEL	PAGE 64
RULE 1513 (D) TWO OR MORE CHILDREN	PAGE 64
RULE 1514 GUIDELINES FOR DETERMINING PAYMENT OF APPOINTED COUNSEL FOR MINORS.....	PAGE 65
RULE 1514 (A) GENERAL GUIDELINES	PAGE 65
RULE 1514 (B) DETERMINATION OF ABILITY OF PAY.....	PAGE 65
RULE 1514 (C) PAYMENT OF APPOINTED COUNSEL.....	PAGE 65
RULE 1515 EX PARTE PROCEDURES	PAGE 66

RULE 1515.1 EX PARTE NOTICE	PAGE 66
RULE 1516 FAMILY LAW COURT COMMUNICATION PROTOCOL	PAGE 66

CHAPTER 16 - JUVENILE RULES

RULE 1610 SANCTIONS.....	PAGE 67
RULE 1620 TIME FOR FILING REPORTS IN JUVENILE PROCEEDINGS	PAGE 67
RULE 1630 CALENDAR CALL	PAGE 67
RULE 1640 CONTINUANCES	PAGE 67
RULE 1640.1 WRITTEN MOTION FOR CONTINUANCE.....	PAGE 67
RULE 1640.2 ORAL MOTIONS FOR CONTINUANCE	PAGE 67
RULE 1650 MOTIONS.....	PAGE 68
RULE 1650.1 NOTICE	PAGE 68
RULE 1650.2 RESPONSE	PAGE 68
RULE 1650.3 REPLY	PAGE 68
RULE 1650.4 MOTION UNDER § 700.1	PAGE 68
RULE 1660 ORDER SHORTENING TIME	PAGE 69
RULE 1670 PRETRIAL SETTLEMENT CONFERENCES IN DEPENDENCY MATTERS	PAGE 69
RULE 1670.1 PRETRIAL AT ISSUE MEMORANDUM	PAGE 69
RULE 1670.2 COURT PROCEDURE.....	PAGE 70
RULE 1670.3 ORDER RE: PRETRIAL AT-ISSUE MEMORANDUM	PAGE 70
RULE 1670.4 MODIFICATION OF ORDER RE: PRETRIAL AT-ISSUE MEMORANDUM	PAGE 70
RULE 1670.5 CONTINUANCES	PAGE 70
RULE 1670.6 REQUIREMENT OF JURISDICTIONAL/ DISPOSITIONAL REPORT	PAGE 70
RULE 1670.7 PRETRIAL SETTLEMENT CONFERENCE PRIOR TO CONTESTED § 366.26 HEARING	PAGE 71
RULE 1680 PRETRIAL DISCOVERY IN PROCEEDINGS UNDER SECTION 600 ET SEQ	PAGE 71
RULE 1680.1 DISCLOSURE OF INFORMATION UNDER PC SECTION 1054 ET SEQ.	PAGE 71
RULE 1690 RELEASE OF INFORMATION RELATING TO JUVENILES	PAGE 71
RULE 1690.1 OBJECTION TO REQUEST FOR RELEASE OF INFORMATION TO JUVENILES	PAGE 71
RULE 1690.2 REVIEW BY COURT.....	PAGE 71
RULE 1691 CLIENT COMPLAINTS IN DEPENDENCY MATTERS	PAGE 72

RULE 1692 COMPETENCY OF ATTORNEYS REPRESENTING PARTIES IN JUVENILE DEPENDENCY AND DELINQUENCY MATTERS	PAGE 72
RULE 1692.1 TIME FOR SUBMITTING INITIAL CERTIFICATION OF COMPETENCY WITH THE COURT.....	PAGE 72
RULE 1692.2 ATTORNEYS NOT MEETING THE MINIMUM STANDARDS ON EFFECTIVE DATE OF THIS RULE.....	PAGE 72
RULE 1692.3 ATTORNEYS CERTIFIED IN OTHER COUNTIES.....	PAGE 72
RULE 1692.4 MINIMUM STANDARDS OF COMPETENCY	PAGE 73
RULE 1692.5 RECERTIFICATION EVERY THREE YEARS.....	PAGE 73
RULE 1692.6 TRAINING AND/OR EDUCATION REQUIRED FOR RECERTIFICATION	PAGE 73
RULE 1692.7 DECERTIFICATION.....	PAGE 74
RULE 1692.8 MAXIMUM CASELOAD	PAGE 74
RULE 1693 CHILD ADVOCACY PROGRAM: COURT APPOINTED SPECIAL ADVOCATE/GUARDIAN AD LITEM.....	PAGE 74
RULE 1693.1 DUTIES OF CAA/GAL VOLUNTEERS	PAGE 74
RULE 1693.2 APPEALS/GRIEVANCE PROCEDURE FOR CASA/GAL VOLUNTEERS	PAGE 74
RULE 1693.3 REFERRAL OF CASE TO CASA/GAL PROGRAM; APPOINTMENT OF CASA/GAL VOLUNTEER	PAGE 75
RULE 1693.4 CHILD ADVOCACY ADVISORY COUNCIL.....	PAGE 75
RULE 1693.5 CONFIDENTIALITY OF SBCAPI RECORDS.....	PAGE 76

CHAPTER 17 - RESERVED

CHAPTER 18 - ELECTRONIC FILINGS

RULE 1800 ELECTRONIC FILING PILOT PROGRAM	PAGE 78
RULE 1810 DEFINITIONS	PAGE 78
RULE 1820 ELECTRONIC FILING PARTICIPATION	PAGE 79
RULE 1830 FAX FILINGS (FACSIMILE TRANSFER TO COURT).....	PAGE 79
RULE 1831 FEE EXEMPTION	PAGE 79
RULE 1840 ELECTRONIC FILING PROCESS.....	PAGE 79
RULE 1840(a) DATE/TIME OF FILING.....	PAGE 80
RULE 1840 (b) RECEIPT OF DATA	PAGE 80
RULE 1840 (c) ERRORS OR MALFUNCTIONS	PAGE 80
RULE 1840 (d) ACCEPTANCE OF FILING BY EFS.....	PAGE 80
RULE 1840 (d)(1) REJECTED FILINGS	PAGE 80
RULE 1840 (d)(2) ERRORS OR MALFUNCTIONS	PAGE 81
RULE 1840 (e) JUDICIAL COUNCIL FORMS (CRC982.9).....	PAGE 81
RULE 1840 (f) ENDORSEMENT	PAGE 81
RULE 1840 (f)(1)	PAGE 81
RULE 1840 (f)(2)	PAGE 81
RULE 1840 (g) SUMMONS (CCP 412.20, 415.10)	PAGE 81
RULE 1840 (h)	PAGE 81
RULE 1840 (i) INQUIRY/VIEWING.....	PAGE 81

RULE 1840 (j) CERTIFICATION	PAGE 82
RULE 1840 (k) SIGNED DOCUMENTS	PAGE 82
RULE 1840 (k)(1) POSSESSION OF SIGNED DOCUMENTS.....	PAGE 82
RULE 1840 (k)(2) DEMAND FOR SIGNED DOCUMENTS	PAGE 82
RULE 1840 (k)(3) EXAMINATION OF SIGNED DOCUMENTS.....	PAGE 82
RULE 1840 (l) ATTACHMENT	PAGE 82
RULE 1840 (m) ELECTRONICALLY MAILED SERVICE.....	PAGE 82
RULE 1840 (n) CHANGE OF ELECTRONIC MAIL ADDRESS	PAGE 83
RULE 1850 DOCUMENT FORMAT	PAGE 83
RULE 1860 ELECTRONIC FILING SYSTEM INQUIRIES	PAGE 83
 CHAPTER 19 - MISCELLANEOUS	
RULE 1900 COURTROOM DECORUM.....	PAGE 84
RULE 1910 APPOINTMENT OF MEDICAL EXAMINER AND PSYCHIATRISTS	PAGE 84
RULE 1920 DEPOSITIONS	PAGE 84
RULE 1921 NOTICE OF DEPOSITION.....	PAGE 84
 APPENDIX I PROBATE RULES	PAGE 85
 TABLE OF CONTENTS FOR APPENDIX I.....	PAGE 85

CHAPTER 1
COURT RULES AND ADMINISTRATION

PART 1
INTRODUCTION

RULE 111 TITLE OF NEW ENTITY PASSAGE OF SENATE CONSTITUTIONAL AMENDMENT 4 (SCA 4), Prop. 220

1. The name of the Court is "Superior Court of California, County of San Bernardino". (Eff. January 1, 1999.)

RULE 112 EFFECTIVE DATE

July 1, 2000.

RULE 113 METHOD OF ADOPTION

Upon a majority vote of the Judges of the Court. (Eff. January 1, 1999.)

RULE 114 EFFECT OF THE RULES AND CITATION OF RULES

These rules shall be known and cited as "Superior Court Rules" hereinafter referred to as "Court Rules", and shall at all times be supplementary to and subject to any and all rules heretofore and hereafter adopted by the Judicial Council of the State of California for the Courts. These rules shall, on the date when they become effective, supersede all pertinent rules or policies heretofore adopted by either the Superior or former Municipal Court of San Bernardino County or by both Courts jointly which are hereby replaced in their entirety as of the date when these new rules become effective. The new rules have no retroactive effect or application whatsoever. (Eff. July 1, 1998 as amended January 1, 1999.)

RULE 115 CONSTRUCTION AND APPLICATION OF RULES

These rules shall be construed and applied in such manner as not to conflict with the rules heretofore or hereafter adopted by the Judicial Council of the State of California for the Courts and shall be liberally construed to secure the proper and efficient administration of the business and affairs of this Court and promote and facilitate the administration of justice by this Court. Rule and subdivision headings do not in any manner affect the scope, meaning or intent of any of the provisions of these Rules. (Eff. July 1, 1998.)

PART 2
DESIGNATION OF JUDGES

RULE 120 JUDICIAL RESOURCES

For purposes of assignment or transfer, the Presiding Judge shall consider seniority as a judge, and place of residence as factors in making such assignment or transfer. (Eff. January 1, 1999.)

PART 3
DISTRICTS OF THE COURT

RULE 130 DISTRICTS DEFINED

For the convenience of the parties, attorneys and the Court, sessions of the Court shall be heard in Districts, which are based upon the Courthouse location as provided:

The San Bernardino District is the District consisting of the Courthouse located in San Bernardino.

The Redlands District is the District consisting of the Courthouse located in Redlands.

The Fontana District is the District consisting of the Courthouse located in Fontana.

The Twin Peaks District is the District consisting of the Courthouse located in Twin Peaks.

The Rancho Cucamonga District is the District consisting of the Courthouse located in Rancho Cucamonga.

The Chino District is the District consisting of the Courthouse located in Chino.

The Victorville District is the District consisting of the Courthouse located in Victorville.

The Barstow District is the District consisting of the Courthouse located in Barstow.

The Needles District is the District consisting of the Courthouse located in Needles.

The Joshua Tree District is the District consisting of the Courthouse located in Joshua Tree.

The Big Bear District is the District consisting of the Courthouse located in Big Bear.

The Juvenile Court District is the District consisting of the Juvenile Courthouse located in San Bernardino. (Eff. January 1, 1999.)

RULE 131

Unless the Presiding Judge shall order otherwise, all actions or proceedings shall be filed in the District in which they arose, or in which the land subject to dispute is situated, or in which a party thereto resides, or in the case of probate proceedings, in which the decedent resided; such matters shall be tried in such Districts provided, however:

The San Bernardino District shall also hear, and have filed there:

- a) Mental health proceedings;
- b) Superior Court appellate proceedings (except trials de novo);
- c) Civil Actions over \$25,000 and Family law occurring in Fontana, Twin Peaks, or Redlands Districts;

The Rancho Cucamonga District shall also hear, and have filed there:

Civil Actions over \$25,000 and Family Law occurring in Chino District;

Juvenile Court proceedings, unless other Juvenile Courts are established, shall be heard in San Bernardino Juvenile District.

All other Civil Actions shall be filed in their respective District.

(Eff. July 1, 1998, as amended January 1, 1999.)

RULE 132

Departments designated for hearing juvenile delinquency and dependency shall be located as designated by the Presiding Judge of the Superior Court or the Presiding Judge of the Juvenile Court. Departments designated for hearing mental health matters (other than mentally disordered sex offender proceedings) shall be located as designated by the Presiding Judge of the Superior Court. (Eff. January 1, 1999.)

Rule 132.2

Any action or proceeding may be transferred to any other District by the Court on its own motion or on noticed motion by any party where the action was filed in the wrong District or for other good cause shown by Affidavit or Declaration. (Eff. July 1, 1998.)

Rule 132.3

Any supplemental proceedings shall be heard in the District where the original action was filed unless an order transferring all future proceedings to another District has been entered. (Eff. July 1, 1998.)

RULE 133 TRIAL JURY VENIRES

Trial jury venires for the Court shall be drawn from residents of the District in which a matter is tried. For the purposes of this rule, the Districts include residents of the following postal zip codes:

The San Bernardino District shall include residents of postal zip codes 92252, 92256, 92268, 92277 – 92278, 92284 – 92286, 92304 - 92305, 92313, 92316 – 92322, 92324 - 92326, 92334 – 92337, 92339, 92341, 92346, 92350, 92352, 92354, 92357 - 92359, 92369, 92373 – 92378, 92382, 92385, 92391, 92399 and 92401 – 92427.

The Redlands District shall include residents of postal zip codes 92305, 92318, 92320, 92339, 92346, 92350, 92354, 92357, 92359, 92373 – 92375 and 92399.

The Fontana District shall include the residents of postal zip codes 92313, 92316, 92324, 92334 – 92337, 92358 and 92376 – 92377.

The Twin Peaks District shall include residents of postal zip codes 92317, 92321 – 92322, 92325 – 92326, 92341, 92352, 92378, 92382, 92385 and 92391.

The Rancho Cucamonga District shall include residents of postal zip codes 91701, 91708 – 91710, 91729 – 91730, 91737, 91739, 91743, 91758 – 91759, 91761 – 91764, 91766 and 91784 – 91786.

The Chino District shall include residents of postal zip codes 91708 – 91710 and 91766.

The Victorville District shall include residents of postal zip codes 92301, 92307 – 92308, 92314 – 92315, 92329, 92333, 92340, 92342, 92345, 92356, 92368, 92371 – 92372; 92386, 92392 – 92394 and 92397.

The Big Bear District shall include residents of postal zip codes 92314 – 92315, 92333, and 92386.

The Barstow District shall include residents of postal zip codes 92242, 92267, 92280, 92309 – 92312, 92323, 92327, 92332, 92338, 92347, 92351, 92357, 92363 – 92366, 92398, 93516, 93554, 93558, 93562, 93564 and 93592.

The Needles District shall include residents of postal zip codes 92242, 92267, 92280, 92332 and 92363.

The Joshua Tree District shall include residents of postal zip codes 92252, 92256, 92268, 92277 – 92278, 92284 – 92286, 92304 and 92319.

Notwithstanding the foregoing, whenever necessary to facilitate the business of the Court, trial jury venires for the Court may be drawn from residents of any and all Districts. (Eff. January 1, 2000.)

CHAPTER 2
ADMINISTRATIVE ORGANIZATION

PART 1
PRESIDING JUDGE

RULE 210 DUTIES

The Presiding Judge shall have no regular Court assignment. The Presiding Judge shall have those powers and duties conferred upon such office of the Court by statute the California Rules of Court and Standards of Judicial Administration as promulgated by the Judicial Council. (Eff. July 1, 1998. Amended, eff. July 1, 2003.)

RULE 211 ELECTION

One Presiding Judge and one Assistant Presiding Judge shall be selected by a majority vote of the Superior Court Judges who vote. The term of office for the Presiding Judge and Assistant Presiding Judge shall be for two years commencing on January 1. However, the election (selecting the Presiding Judge and Assistant Presiding Judge) shall be held in the month of June every two years commencing June in the year 2001.. (Eff. July 1, 1998 as amended January 1, 1999. (As amended, eff. July 1, 2001)

RULE 212 NOMINATION

The Nominating Committee shall consist of the immediate past Presiding Judge of the Superior Court and the Supervising Judges of the Central, West and Desert Region. The chair of this four-member committee shall be the past Superior Court Presiding Judge. In the event the past Presiding Judge is no longer a Judge pursuant to Rule 212.3, the number of the Nominating Committee shall be temporarily reduced by that number until a past Presiding Judge exists and the current Presiding Judge shall appoint the temporary chair of the committee. (Eff. July 1, 1998 as amended January 1, 1999.)

Rule 212.1

The Nominating Committee shall meet in the month of May preceding the June election. Nominees shall be presented to all Judges at least fourteen (14) days prior to election. Elections shall be held at the June meeting of all Judges. Written proxies are allowed. (As amended, eff. July 1, 2001.)

Rule 212.2

Within seven days of the circulation of the names of the candidates nominated by the Nominating Committee, all candidates for each office nominated by the Nominating Committee or nominated by petition shall stand for election at the June bench meeting. (Eff. July 1, 1998. Amended, eff. July 1, 2001.)

Rule 212.3

For purposes of these Rules, “Judges” are Judges sitting in San Bernardino County on a full-time basis and not subject of Judicial Council temporary assignment (Eff. July 1, 1998.)

RULE 213 REMOVAL/VACANCY

The Presiding Judge may be removed from office by a vote at a regularly scheduled meeting or upon the call for a meeting of 20% of all Judges. On vote, a simple majority of all Judges may remove the Presiding Judge.

If for any reason the Presiding Judge is unable to complete his or her term, the Assistant Presiding Judge shall temporarily act as the Presiding Judge until a new election is held to elect a new Presiding Judge and Assistant Presiding Judge for the balance of the incomplete term. Such election shall take place within thirty days of the vacancy or removal of the Presiding Judge. Any vacancy in the Assistant Presiding Judge shall be cured by election within thirty days. (Eff. July 1, 1998.)

PART 2
MEETINGS

RULE 220

An annual meeting of the Judges of the Superior Court shall be held during the month of October, at such time and place as may be designated by the Presiding Judge. (Eff. July 1, 1998 as amended January 1, 1999.)

Rule 220.1

Special meetings of the Judges shall be held:

- a) Upon the call of the Presiding Judge; or
- b) Upon the written petition to the Presiding Judge signed by 20% or more of all Judges specifying the purpose/agenda of such special meeting. Notice of any such special meeting shall be given to all Judges at least 24 hours in advance of such meeting. (Eff. July 1, 1998.)

Rule 220.2

Special meetings of the Judges of a particular District of San Bernardino County shall be held:

- a) Upon the call of the Supervising Judge of said District; or
- b) Upon the written petition to the Supervising Judge of said District signed by 20% or more of the Judges of said District specifying the purpose/agenda of such special meeting. Notice of any such special meeting shall be given to all Judges of said District at least 24 hours in advance of such meeting. (Eff. July 1, 1998.)

RULE 221

Written proxy votes of absent Judges shall be allowed for the election of the Presiding Judge and the Assistant Presiding Judge. Written proxy votes of absent Judges also shall be allowed for any other matters; provided, however, that such matters have been set forth and noticed in writing in advance of the meeting. (Eff. July 1, 1998.)

PART 3
EXECUTIVE COMMITTEE

RULE 230 COMPOSITION

The Executive Committee shall consist of thirteen members: the Presiding Judge, who shall be the chairperson, the Assistant Presiding Judge, one Commissioner and ten Judges selected by the Judges of each areas as follows:

- a. ~~Three~~ Two Judges representing the West Region (Rancho Cucamonga and Chino Districts) selected by the judges of that region.
- b. ~~Three~~ Two Judges representing the Central Region (San Bernardino, Fontana, Redlands, and Twin Peaks Districts [minus Juvenile Court District]) selected by the judges of that region.
- c. One Judge representing the Juvenile Court.
- d. ~~Three~~ Two Judges representing the Desert Region (Victorville, Barstow, Joshua Tree, Needles and Big Bear Districts) selected by the judges of that region
- e. Three Judges elected as follows:
 - One Judge with less than seven years of judicial service, elected by all judges with same years of service as of December 31 of each year.
 - One Judge with at least seven but less than fourteen years of judicial service elected by all judges with same years of service as of December 31 of each year.
 - One Judge with fourteen or more years of judicial service elected by all judges with same years of service as of December 31 of each year.

No region (West, Central or Desert) may have more than one Judge elected from that region based on judicial service.

e. f. One Commissioner representative selected from all Commissioners. (Eff. July 1, 1998, amended eff. January 1, 2000.) The Commissioner selected shall not have any voting rights on the Executive Committee.

(Eff. July 1, 1998. Amended eff. January 1, 2000. Amended eff. July 1, 2000. As amended eff. January 1, 2004.)

RULE 231 DUTIES

Rule 231.1

The Executive Committee shall advise and assist the Presiding Judge on all matters related to Court administration. (Eff. January 1, 2000.)

Rule 231.2

With the assistance of the Executive Officer, the Executive Committee shall adopt an annual budget for submission to the ~~County Board of Supervisors or Trial Court Budget Commission~~. Administrative Office of the Courts. (Eff. January 1, 2000, as amended, eff January 1, 2004.)

Rule 231.3

The Executive Committee shall review and approve the organizational structure for the administration of the Court system under the Court Executive Officer. (Eff. January 1, 2000.)

Rule 231.4

The Executive Committee shall review and recommend major personnel and administrative policies. Adoption of these policies shall be subject to the approval of a majority of all the Judges per Rule 234. (Eff. January 1, 2000. As amended, eff. January 1, 2004.)

Rule 231.5

The Executive Committee shall serve as the "Sheriff's Court Services Committee" (Eff. January 1, 2000, as amended eff. July 1, 2000.)

Rule 231.6

The Presiding Judge shall appoint from among all the Judges such committees, as he or she deems appropriate for the conduct of Court business. The committees will be responsible for the oversight of Court functions and the development and analysis of Court policy initiatives as directed by the Presiding Judge. Specific areas in which such committees may be expected to operate include Personnel, Budgeting, Facilities, Automation, Civil, Criminal, Juvenile, Family Law, Rules, and Commissioner Oversight. (Eff. July 1, 1998.)

RULE 232 TERM OF OFFICE

The terms of office of the current members of the Executive Committee shall be extended for one additional year (year 2000). Commencing in 2001, members of the Executive Committee are elected for two-year terms. The terms are staggered to ensure continuity and history to the committee's business. Every year five seats are up for election. The five even-numbered seats (positions) will be elected for even-numbered years. The five odd-numbered seats (positions) will be elected for odd-numbered years.

Judges selected based on seniority shall serve a two year term. These three terms shall not be staggered like the remainder of the Executive Committee. This rule shall take effect commencing Executive Committee meeting held in January 2004.

Should a member of the Executive Committee be reassigned to a region or court, other than one from which he was elected to serve on the committee, during his term of office, the member shall serve the remainder of his term of office. The member shall not be required to resign his membership as a result of reassignment.

The Commissioner's position will be filled each year by a majority vote of the commissioners. This seat is a one-year term. Nothing in this rule will limit the same person from being re-elected to numerous terms. (Eff. July 1, 1998, amended eff. July 1, 2000). As amended, eff. January 1, 2004.

RULE 233 QUORUM

A quorum shall consist of a majority of the Executive Committee members. No action may be effective unless a quorum is present. (Eff. January 1, 2000, amended eff. July 1, 2000. As amended, eff January 1, 2004.)

RULE 234 EFFECT OF ACTION OF THE EXECUTIVE COMMITTEE

All actions of the Executive Committee shall have the same force and effect as actions of a majority of the Judges taken at an annual, regular or special meeting unless objections thereto shall be given in writing by six (6) or more of the Judges to the Presiding Judge within five (5) days after the minutes of such meeting shall have been delivered "in-house". Agendas for Executive Committee meetings shall be delivered to all Judges three (3) days prior to scheduled meetings. Minutes shall be sent to all Judges within ten (10) Court days of the meeting. In the event that such objections are filed, the Presiding Judge shall place such matters on the agenda of the next succeeding regular or special meeting of the Judges and such action of the Executive Committee shall be deemed not to have been taken. (Eff. January 1, 2000, amended eff. July 1, 2000)

PART 4
COURT EXECUTIVE OFFICER

RULE 240 SELECTION

The Court Executive Officer (Executive Officer) shall be selected by election of a majority of all Judges. (Eff. July 1, 1998, as amended, eff. January 1, 2001.)

RULE 241 STATUTORY RESPONSIBILITIES

The Executive Officer shall be the Clerk, Executive Officer and Jury Commissioner of the Superior Court of California, County of San Bernardino. (Eff. January 1, 1999.)

Rule 241.1 Transfer of Powers, Duties and Responsibilities from the County Clerk to the Executive Officer

- A. Pursuant to Government Code Section 69898, subdivision (c) and (d), the court hereby transfers from the County Clerk to the Superior Court Executive Officer all of the powers, duties and responsibilities of the County Clerk which relate to, serve or impact the functions of this court. The powers, duties and responsibilities transferred pursuant to this rule shall include all of those performed by the County Clerk with respect to superior court actions, proceedings and records, including but not limited to:
1. The acceptance, processing and filing of papers in connection with any action or proceeding before the court, including but not limited to those relating to the court's original jurisdiction, appellate jurisdiction and appeals from the court; the maintenance and management of court records; the micro-filming of court records and the keeping and disposition of papers, documents, files and exhibits in accordance with law.
 2. The maintenance of indexes of all court files; the keeping of a register of actions or its alternate.
 3. The issuance of process and notice including without limitation, summons, writs of execution, and other writs; subpoenas to witnesses; probate notices; citations in probate, guardianship and other matters; the acceptance of service on parties, the entry of defaults; the transmission of transcripts on change of venue.
 4. The attendance at each session of court and upon the judge in chambers when required; the administration of oaths; the keeping of minutes and other records of the court.
 5. The entry of orders, findings, judgments and decrees; the acceptance for filing of confessions of judgment; the authentication of records; certification of abstracts of judgment, the keeping of a judgment book or its equivalent.

6. The collection, receipt, deposit, and accounting of fees for filings, for preparing or certifying copies and for other fees; the receipt of jury fees, bonds, undertakings, fines, forfeitures and revenues; the keeping of money deposited in court including but not limited to, funds received in connection with minor's compromise; the recovery of county costs in judicial commitment proceedings.
 7. The maintenance of statistical and financial records and the preparation of reports to the Judicial Council and other state and county offices as required by law or policy.
 8. The preparation of the clerk's transcript on appeal and the transmission of the record and exhibits to the reviewing court.
 9. The receipt of wills of decedents.
 10. The taking of bail and related matters as provided in the Penal Code.
 11. The provision of calendar management, including the calendaring of cases and hearings and the maintenance of court calendars and schedules.
 12. The printing and sale of court forms and rules of court; the procurement of supplies.
 13. The keeping and affixing of the seal of the court to appropriate instruments.
 14. Administrative functions related to the above, including hiring, training and supervision of personnel; accounting functions; mailing activities; and ordering and storing equipment and supplies.
- B. The County Clerk is hereby relieved of any obligation imposed on him by law with respect to the above powers, duties and responsibilities. This rule does not transfer from said County Clerk to the Executive Officer those powers, duties, and responsibilities of the County Clerk which are performed by County Clerk in such capacity such as the issuance of marriage licenses, the filing of fictitious business name statements, and the keeping of naturalization records.
- C. If any part of this rule is held to be unconstitutional or invalid, the remaining parts shall not be affected thereby. (Eff. January 1, 1999.)

RULE 242 DUTIES

Under the general direction of the Presiding Judge, the Executive Officer shall be responsible for the proper and efficient administration of the Courts, the implementation of personnel rules, administrative and judicial policies adopted by the Judges, and supervision of all non-judicial Court personnel placed under his/her authority in the organizational structure. (Eff. July 1, 1998.)

Rule 242.1

The Executive Officer shall be the appointing authority for Court staff, except the Sheriff, and Sheriff's staff and Court Commissioners. (Eff. July 1, 1998. Amended, eff. July 1, 2003.)

Rule 242.2

The Executive Officer shall prepare and submit a draft annual budget for the consolidated Court system to the Presiding Judge and Executive Committee. (Eff. July 1, 1998, amended eff. July 1, 2000.)

Rule 242.3

The Executive Officer shall make recommendations to the Presiding Judge and Executive Committee on proposed policies and procedures to carry out functions of the Court. (Eff. July 1, 1998, amended eff. July 1, 2000.)

Rule 242.4

The Executive Officer shall prepare reports, analyses, and statistical evaluations as requested by the Judicial Council, the Presiding Judge and the Executive Committee. (Eff. July 1, 1998, amended eff. July 1, 2000.)

Rule 242.5

The Executive Officer shall perform such duties as set forth in the personnel policies of the Courts. (Eff. July 1, 1998.)

Rule 242.6

Under the general direction of the Presiding Judge, the Executive Officer shall be responsible for coordinating the administration of the Superior Court and shall have the duties and responsibilities prescribed and conferred by the Presiding Judge in consultation with the Executive Committee. (Eff. July 1, 1998, amended eff. July 1, 2000.)

RULE 243 EMPLOYMENT STATUS

The Executive Officer is an "at will" employee who serves at the pleasure of the Judges of the Courts. The Executive Officer may be removed by a majority vote of all Judges sitting as a whole. (Eff. July 1, 1998.)

PART 5
RESERVED

PART 6
COURT COMMISSIONER

RULE 260 APPOINTMENT

The Presiding Judge shall appoint such Court Commissioners as may from time to time be authorized. Such Commissioners shall serve at the pleasure of a majority of the Judges of the Court. (Eff. July 1, 1998.)

Rule 260.1 Procedure for Appointment

A committee of Judges shall interview each applicant and review their respective applications. The committee shall designate which applicants it finds to be qualified and recommend such applicants to the entire Bench. The applicant receiving a plurality of the votes of the entire bench shall be appointed a Court Commissioner by the Presiding Judge in accordance with Rule 260. (Eff. July 1, 1998.)

RULE 261 QUALIFICATIONS

An applicant for appointment as Court Commissioner must have been admitted to practice before the Supreme Court of California for at least ten years. (Eff. July 1, 1998, as amended January 1, 1999.)

RULE 262 VACATION

Superior Court Commissioners and Referees employed by the Court shall be entitled to the same vacation as that received by Judges. (Eff. July 1, 1998.)

RULE 263 GENERAL AUTHORITY

Court Commissioners have all powers assigned by statute pursuant to Government Code Section 68112.5. (Eff. July 1, 1998 as amended January 1, 1999.)

PART 7

**DISCIPLINARY PROCEDURES FOR COURT EXECUTIVE OFFICER
AND COURT COMMISSIONERS**

**RULE 270 REPRIMAND OF SUPERIOR COURT COMMISSIONER OR SUPERIOR
COURT EXECUTIVE OFFICER**

Disciplinary proceedings for the Court Executive Officer or Court Commissioner shall follow the procedures outlined in Rule 252 “Disciplinary procedure for Supervising Judicial Staff Counsel.” (Eff. July 1, 1998.)

RULE 271 COMPLAINTS AGAINST COMMISSIONERS

Investigations of complaints against Commissioners shall follow procedures consistent with proposition 221 and State Rules of Court. (Eff. January, 1 1999.)

**RULE 272 DISCIPLINARY ACTION AGAINST COURT COMMISSIONER AND
COURT EXECUTIVE OFFICER**

The positions of Superior Court Commissioner, Juvenile Dependency Judge Pro-Tem and Juvenile Court Officer and Superior Court Executive Officer serve at the pleasure of a majority of the judges of the Superior Court. As such, the employment of a Commissioner, Juvenile Dependency Judge Pro-Tem, Juvenile Court Officer or the Executive Officer may be terminated at any time upon a majority vote of the full bench of the Superior Court. (Eff. January 1, 2000.)

CHAPTER 3
DISTRIBUTION OF BUSINESS

RULE 310 DISTRIBUTION OF BUSINESS BY PRESIDING JUDGE

It is the intention of the Court that these rules supplement the applicable California Rules of Court, Rule 204.1 et seq. and Government Code § 68616 et seq. To the extent these rules conflict with any Statute or Rule of Court, the Statute or Rule of Court shall control. (Eff. July 1, 1998. Amended eff. July 1, 2003.)

RULE 311 DIRECT CALENDARING OF CIVIL CASES

Rule 311.1 Assignment to Judicial Officer

All cases described as personal injury, eminent domain collection, or other civil shall be subject to assignment to a judicial officer for all purposes other than the Government Code § 68600 et seq. hearings. This section shall not apply to abandonment, adoption, mental health and petitions for approval of minor's compromise and family law cases. (Eff. July 1, 1998)

Rule 311.2 Categorical Department Calendars

The calendar control clerk shall maintain a calendar for each of the categorical departments. When it is necessary to specifically set or to reset any matter on the calendar of any categorical department such special setting or resetting shall be ordered so as to avoid conflict with previously calendared matters. (Eff. July 1, 1998)

Rule 311.3 All-Purpose Assignment to Judicial Officer

Cases which are subject to direct calendars assignment shall be assigned to a judicial officer for all purposes, who shall thereafter handle all proceedings in the case except hearings pursuant to Government Code § 68600 et seq. Nothing herein shall be construed to interfere with the power of the Presiding Judge to assign or reassign cases pursuant to Rule 6.603, California Rules of Court. (Eff. July 1, 1998. Amended eff. July 1, 2003.)

RULE 320 ASSIGNMENT OF BUSINESS

RULE 321 CIVIL DEFAULTS

Rule 321.1 Setting Hearings

Except upon order of the Court, or where otherwise provided by law, the clerk of this Court shall not set regular civil default actions for hearing in any department until 30 days have elapsed after filing of the complaint or petition, and unless the default of the defendant or respondent shall have been first entered not less than 10 days before the proposed hearing date. (Eff. July 1, 1998)

Rule 321.2 Forms (Exceptions)

In all cases where constructive service of summons is had, or where a General Appearance and Waiver under the Soldier's and Sailor's Relief Act, as amended, is on file, the default form "Default Entry – By Court" shall be attached to the Request to Enter Default form, Judicial Council mandatory form number 1299.10 (Eff. July 1, 1998. Amended, eff. July 1, 2003.)

Rule 321.3 Forms

In all other causes, the form “Request to Enter Default” shall apply except as otherwise ordered by the Court. (Eff. July 1, 1998)

RULE 330 TELEPHONIC APPEARANCES

The following will summarize the procedures for all permissible telephonic appearances of counsel in the Superior Court of California, County of San Bernardino. (Eff. July 1, 1998 as amended January 1, 1999.)

Rule 330.1 Prior Approval

With the prior approval of the Presiding Judge in the Department to which a matter is assigned, one or more counsel may make their appearance by telephone in the Superior Court of California, County of San Bernardino. (Eff. July 1, 1998 as amended January 1, 1999.)

Rule 330.2 Notification to the Court

Counsel desiring to appear by telephone must notify the Court by telephone not later than ten (10) Court days prior to the date set for the conference. Whether to allow such an appearance is within the discretion of the Court. The Court shall grant or deny counsel’s request not later than five (5) Court days prior to the hearing date. Counsel shall notify any other party(ies) or their counsel of his/her intention to appear telephonically at the time the Court is notified of the request. Such notice may be telephonic or via fax. All pleadings filed in any matter in which counsel has requested a telephonic appearance must so indicate in the caption on the first page. (Eff. July 1, 1998.)

Rule 330.3 Scheduled Telephonic Appearance

Counsel wishing to appear telephonically for more than one hearing, during any given cause, must make separate arrangements for each appearance pursuant to Rule 330.2. Individual departments will advise counsel whether calls are placed directly or through an outside service provider. Instructions for the use of this service will be provided by the Department. (Eff. July 1, 1998.)

Rule 330.4 Obligation for Placement of Call

Counsel requesting telephonic appearance in any matter in which appearance by telephone has been approved by the Court shall be obligated to place a telephone call to the number designated by the Court at least five minutes before the time scheduled by the Court for telephonic appearance. If an outside service provider is used, instructions for its use will be provided by the Court upon request. (Eff. July 1, 1998.)

Rule 330.5 Cost of Telephone Call

Counsel is expected to equally share the cost of any conference calls or the cost of enhanced service provided by an outside provider. However, failing such an arrangement, the calling party will bear the cost of such conference calls. The Court is not responsible for the cost of any telephone calls and will not hear any dispute regarding the allocation of such costs between multiple attorneys appearing by telephone. (Eff. July 1, 1998.)

Rule 330.6 Non-appearance by Telephone Call

If counsel does not place or participate in a call after requesting to appear by telephone, the matter will be deemed submitted by that counsel. If there are no appearances by counsel by telephone after requesting same, the matter will be taken off calendar and the at-issue stricken at the discretion of the Court. (Eff. July 1, 1998.)

Rule 330.7 Trailing or Recalled Status

Counsel on cases placed into trailed or recall status may request authority to appear by telephone. Such request must be made in open Court at the time the case is trailed or placed on recall. If granted, the Court will provide the specific conditions of telephonic appearance. (Eff. July 1, 1998.)

RULE 331 UNCONTESTED MATTERS

Defaults, minor's settlement, adoptions, and other uncontested matters shall be scheduled by the default calendar clerk, and any reassignment of such cases shall be coordinated by said clerk. (Eff. July 1, 1998.)

RULE 332 APPELLATE DIVISION

Matters before the appellate division shall be heard on the fourth Friday of every month at 1:30 p.m., or such other time determined by the Judges of that division by order entered in the minutes. (Eff. July 1, 1998. Amended, eff. July 1, 2001.)

CHAPTER 4
CIVIL CASE MANAGEMENT

RULE 400 CIVIL CASES SUBJECT TO THE DELAY REDUCTION ACT

These Rules are adopted pursuant to the Trial Court Delay Reduction Act (Government Code Sections 68600, et seq.) and the Pre-Trial and Trial Rules and Civil Trial Court Management Rules of the California Rules of Court, Rules 201.7-226. They shall apply only to actions included in the classification of general civil cases as defined in California rules of Court, Rule 207(b) and exceptional cases. (Eff. July 1, 1998. Amended, eff. July 1, 2002.)

RULE 401 POLICY

It is the policy of the Court that all included cases shall be tried or otherwise disposed of. Consistent with the time limits set forth in California Rules of Court 207-210. (Eff. July 1, 1998. Amended, eff. July 1, 2002.)

RULE 402 DEFINITION

This category shall include all the civil matters not excluded as exceptional cases or others stated in the first section of this chapter. Uninsured motorist claims cases will be referred through these proceedings. (Eff. July 1, 1998.)

Rule 402.1 Exceptional Cases

An exceptional case is one that includes multiple issues involving multiple parties and/or unusual proof problems. In such cases, a case management plan will be tailored by the Court and counsel to apply close and continuous supervision over its procedural development. (Eff. July 1, 1998.)

RULE 403 ASSIGNED JUDGES

Cases governed by this chapter will be assigned to the participating Judges on all-purpose assignments. The all-purpose Judge will be assigned at the time of the filing. (Eff. July 1, 1998.)

RULE 404 DESIGNATION

All cases subject to this chapter filed on or after January 1, 1992 shall be designated by the plaintiff on the face of the Complaint into one or the appropriate categories. A civil action presented for filing must be accompanied by a Certificate of Assignment form, attached to the Complaint. In the event of disagreement by the parties as to the classification of any action, the Court may, on motion of any party, or on its own motion, order a hearing and determination of the question of designation. (Eff. July 1, 1998.)

RULE 408 CASE MANAGEMENT CONFERENCE

The case management conference will combine the functions previously covered by at-issue conference, status conferences regarding arbitration, initial voluntary settlement conferences, and trial setting conferences. The date of the case management conference shall be set by the clerk at the time of the filing of the initial complaint. The date fixed will be a Court date in the twentieth (20th) week from the filing of the complaint. At the case management conference, all trial counsel must be present or represented by counsel thoroughly familiar with

the case. At the hearing, the Court will set future dates for general civil cases, including dates for the Mandatory Settlement Conference, Trial Management Conference and trial, and consider any special scheduling for exceptional cases. (Eff. July 1, 1998. Amended, eff. July 1, 2001. As amended, eff. July 1, 2002)

RULE 409 ALTERNATE DISPUTE RESOLUTION PROCEEDINGS

At the case management conference, the Court shall review the case and determine if the parties are amenable to using an alternate dispute resolution process. The Court may order the case to arbitration, or make such other alternate resolution orders as may be appropriate. (Eff. July 1, 1998 Amended, eff. July 1, 2002)

RULE 410 MANDATORY SETTLEMENT CONFERENCE (MSC)

The mandatory settlement conference shall take place on the dates set by the Court at the case management conference. The settlement Judge will be authorized to change trial dates or trial assignments. (Eff. July 1, 1998)

RULE 411 TRIAL MANAGEMENT CONFERENCE (TMC)

A trial management conference will be held in all general civil and exceptional cases. The purpose of this conference will be to finalize trial preparation and allow the trial of the case to proceed in a more expeditious manner. On the date set by the Court, the parties and trial counsel shall appear and submit to the Court any motions in limine, their jury instructions, their witness list, their exhibit list, a statement of any stipulated facts, proposed voir dire questions and/or questionnaires, and a short statement of the case to be read to the jury if applicable. If a party reasonably believes a witness's name or an exhibit should be confidential until used in trial, he shall so indicate to the Judge in camera. All motions in limine shall have been submitted in writing with service completed at least 8 days before the conference.

All proposed jury instructions shall likewise be submitted in their proper form, including special instructions. A mere reference to BAJI instruction numbers will not suffice. (Eff. July 1, 1998)

RULE 412 EXCEPTIONAL CASES

If a case qualified for an exceptional case status, the assigned Judge shall continue as an all-purpose Judge to hear all further proceedings in the case.

If a case is accepted by or defined by the Court as an exceptional case, the matter will be subject to a scheduling conference if the Court finds it is appropriate. No later than five Court days before the scheduling conference, each party shall file a schedule describing a plan for the future progress of the action. Each schedule shall include a description of the action taken in the case to date, the conduct of further law and motion matters, and the conduct of future discovery. The Court at the scheduling conference will issue an appropriate order approving or setting a schedule. The Court may conduct further scheduling conferences, as appropriate, to ensure progress of the case consistent with the policy of these Rules. Rule 401 does not apply to Exceptional Cases. (Eff. July 1, 1998)

RULE 413 UNINSURED MOTORIST (UM) CLASS

If a case is filed by a plaintiff against a defendant who is an uninsured motorist, and the plaintiff's claim is subject to an arbitration provision, the case may be designated a general civil - UM. The case will be exempt from time requirements of these Rules, except that the case management conference will be set as in regular cases so that the Court can monitor the progress of the arbitration. A UM case may be redesignated as General Civil by the Court on its own motion or by motion of any interested party. (Eff. July 1, 1998)

RULE 415 TRIAL READY LIST

The clerk shall place each case on a trial ready list, which shall establish the sequence in which cases are set for a pre-trial conference, or for trial, giving priority to those cases entitled thereto under the law. (Eff. July 1, 1998 Amended, eff. July 1, 2002.)

RULE 416 DUTY OF COUNSEL AS TO TRIAL DATE ASSIGNED

After a trial date has been assigned, it shall be the duty of counsel to inform the assigned Judge and all opposing counsel of any fact tending to indicate that the case may not proceed to trial on the date to which it has been assigned. In the event of settlement, counsel, or parties appearing in person, shall immediately notify the Court thereof. Failure to do so may be cause for imposition of sanctions. (Eff. July 1, 1998)

RULE 417 UNCONTESTED CALENDARS

All uncontested matters such as adoptions, minors compromise, sole custody dissolutions, nullities, and legal separations, etc. will be set by request made to the clerk. (Eff. July 1, 1998 Amended, eff. July 1, 2002.)

RULE 418 STATEMENT OF POLICY RE CONTINUANCES OF ANY MATTER

This Court practices a firm continuance policy. Counsel should be aware that the dates assigned for trial setting conferences, settlement conferences and trial are definite appointments with the Court. All continuances, contested or not, are to be applied for by noticed motion with supporting declarations. Continuances applied for in any other manner will be denied, except in emergencies. Motions for the continuance of the trial setting conference and trial shall be made to the Assigned Judge. Motions for the continuance of the mandatory settlement conference shall be made to the Judge to whom the mandatory settlement conference has been assigned and shall be granted only if the continuance would not delay the trial of the action nor disrupt the calendar of the Judge to whom the settlement conference has been assigned and shall be granted only if the continuance would not delay the trial of the action nor disrupt the calendar of the Judge to whom the settlement conference has been assigned. The Court will grant continuances only upon an affirmative showing of good cause. Grounds which the Court will recognize as good cause for continuance will be:

(1) Death:

- (i) The death of the trial attorney or an essential witness where, because of the proximity of such death to the date of trial, it is not feasible to substitute another attorney or witness.

- (ii) The death of an expert witness where because of the proximity of his death to the date of trial, there has been no reasonable opportunity for a substitute expert witness to become qualified to testify in the test.
- (iii) The death of any other witness only where it is not possible to obtain another witness to testify to the same facts or where, because of the proximity of his death to the date of trial, there has been no reasonable opportunity to obtain such a substitute witness.

(2) Illness (supported by an appropriate declaration of a medical doctor, stating the nature of the illness and the anticipated period of any incapacity):

- (i) The illness of a party or essential witness, except that, when it is anticipated the incapacity of such party or witness will continue for an extended period, the continuance will be granted on condition of taking the deposition of the party or witness in order that the trial may proceed on the next date set.
- (ii) The illness of the trial attorney or of an expert witness, except that the substitution of another attorney or witness will be considered in lieu of a continuance depending on the proximity of the illness to the date of trial, the anticipated duration of incapacity, the complexity of the case, and the availability of substitute attorney or expert witness.
- (iii) The illness of any other witness only where it is not possible to obtain another witness to testify to the same facts or where, because of the proximity of his illness to trial, there has been no reasonable opportunity to obtain such a substitute witness.

(3) Unavailability of trial attorney or witness

- (i) The unavailability of the trial attorney when he is engaged in the trial of another case if: (a) at the time such attorney accepted the trial date in this case he could not have reasonably anticipated the conflict in trial dates; and (b) the Court was informed and made a finding at the trial setting conference or on motion made at least 30 days before the date set for trial that the case was assigned for trial to this attorney within a particular law firm and that no other attorney in that firm was capable and available to try the case and was or could be prepared to do so.
- (ii) The unavailability of a witness only where the witness has been subpoenaed or is beyond the reach of subpoena and has agreed to be present, and his absence is due to an unavoidable emergency that counsel did not know and could not reasonably have known at the time of the trial setting conference.

(4) Substitution of trial attorney: The substitution of the trial attorney only where there is an affirmative showing that the substitution is required in the interest of justice.

- (5) **Significant change in status of case:** A significant change in the status of the case where, because of a change in the parties or pleadings ordered by the Court, the case is not ready for trial. (Former Rule 361, eff. May 27, 1982. Renumbered as Rule 418 eff. July 1, 1998.)

Rule 418.1 Civil Cases

In order to effect and preserve the maximum efficiency of the Court in reducing congestion and delay in the trial of cases, the Court will enforce a strict policy of requiring case management conferences, mandatory settlement conferences, trial assignments and trials to proceed as calendared in the absence of good cause shown for a continuance thereof. Any request for a continuance or trial assignment or trial date shall be made in the form of a noticed hearing before the Assigned Judge. No stipulation for a continuance of such dates shall be accepted without the express consent of the Assigned Judge. Any request for a continuance of a mandatory settlement conference shall be made to the Judge to whom the settlement conference has been assigned. (Former Rule 361.2 eff. May 27, 1982. Renumbered as Rule 418.1 and amended eff. July 1, 1998.)

Rule 418.2 Civil Cases, Law and Motion, and Voluntary Settlement Conference Policy

It is the policy of the Court to cooperate with counsel regarding continuances of law and motion matters and settlement conferences to the extent possible. This policy is necessarily limited by certain obvious practical considerations. The grant of a last minute continuance is generally inappropriate in that it requires a duplication of effort on the part of the Judge and tends to deprive other litigants of timely access to the Courts. (Former Rule 361.3 eff. May 27, 1982. Renumbered as Rule 418.2 and amended eff. July 1, 1998.)

RULE 419 CIVIL COURT COMMUNICATION PROTOCOL

In hearing any case involving any issue of domestic violence, child custody or visitation, the judicial officer shall make a reasonable inquiry about the existence of any criminal court protective orders and/or other orders regarding child custody or visitation involving the parties to the action currently before the Court. (Eff., July 1, 2003.)

RULE 420 CASES REMOVED TO OTHER COURTS

In the event that a case is removed to any federal court or superior court in another county, the Court will order a date, not earlier than 90 days from the date of removal, for a status conference. Counsel may file a Notice of Status of Removed Case with the court in lieu of appearing at the status conference. The Notice of Status Conference must be filed no later than 10 days prior to the status conference. Upon the filing of the Notice of Status Conference, the Court will continue the status conference for 90 days and provide written notice of the continued status conference date to all parties who have appeared in the case. (Eff., July 1, 2003.)

CHAPTER 5
CIVIL LAW AND MOTION

RULE 510 SUBSEQUENT FILING

All papers, other than those initiating the proceedings, whether in opposition or support, shall be filed directly with the Court clerk in the Law and Motion department in which the matter is scheduled, within the time prescribed by statute or State Rules of Court. (Former Rule 511.2 eff May 27, 1982; amended, eff. Jan 1, 1992. Renumbered as Rule 510 eff. July 1, 1998 amended eff. July 1, 2000.)

RULE 520 MOTION DATE

No motion shall be scheduled or noticed for hearing without first contacting the clerk, with whom moving papers are filed, to request a date for hearing. Should any matter be improperly noticed, the clerk shall refer it to the appropriate Law and Motion Judge for disposition or instructions. Such instructions may be at the discretion of the Judge and may include returning the document without filing. (Eff. May 27, 1982. As amended, eff. July 1, 1998.)

RULE 530 JUDICIAL ASSIGNMENTS

Judicial assignments and reassignments in law and motion matters are made by the Presiding Judge or another Judge designated by the Presiding Judge, based on case numbers in accordance with established policy. The clerk with whom moving papers are filed shall set the hearings in accordance with such policy. (Former Rule 540.1 eff. May 27, 1982. Amended, eff. July 1, 1991 and renumbered as Rule 530, eff. July 1, 1998.)

RULE 540 EX PARTE ORDERS AND CIVIL WRITS

Except as otherwise prescribed in Chapter 7 of these rules, the following ex parte orders must be presented to and signed by the law and motion Judge to whom the case is assigned: orders to show cause, temporary restraining orders, appointments of receivers, writs of prohibition, mandate, review and certiorari in civil matters, and all other ex parte orders in civil matters. Complaints in intervention under the Labor Code do not require supporting documentation. (Former Rule 540.2 eff May 27, 1982. Amended, eff. July 1, 1991 and renumbered as Rule 540, eff. July 1, 1998. As amended eff. July 1, 2003.)

RULE 550 CONTINUANCES

In case any party intends to ask for a continuance or does not intend to proceed in any matter on the date set, that party shall so inform the Court Clerk and opposing counsel as soon as possible, and, in any event, no later than 4:30 p.m. of the second Court day preceding hearing. Failure to comply with this Rule may result in the matter being taken off calendar or deemed to have been submitted for the Court's ruling. (Former Rule 560 eff. May 27, 1982. Renumbered as Rule 550 and amended, eff. July 1, 1998.)

RULE 560 MOTIONS REMOVED FROM CALENDAR

A law and motion matter that has gone off calendar may be restored thereto only upon notice, except in an extraordinary situation to be determined by the Court in its discretion. (Former Rule 570, eff. May 27, 1982. Renumbered as Rule 560, eff. July 1, 1998.)

RULE 570 - Repealed

RULE 580 - Repealed

RULE 591 ORDERS AND JUDGMENTS

Rule 591.1 Minute Orders

Unless otherwise provided by statute or Rule of Court, the minute order granting, denying, sustaining, overruling, or ordering off calendar, will be all that is required and no signed order is necessary. (Former Rule 592, eff. May 27, 1982. Amended eff. July 1, 1991 and renumbered as Rule 591.1 and amended, eff. July 1, 1998.)

Rule 591.2 Judgment Forms

Counsel must prepare, serve, and present to the Court forms for all orders and judgments, which require the Court's signature. If no objection is forthcoming within ten days, the order or judgment will be signed as presented. Complaints in intervention under the Labor Code do not require supporting documentation. (Former Rule 592.2, eff. May 27, 1982. Amended eff. July 1, 1991 and renumbered as Rule 591.2, eff. July 1, 1998.)

RULE 592 FAILURE TO OBJECT

Failure to serve and file written opposition may be deemed a waiver of any objections and an admission that the motion or demurrer is meritorious. (Former Rule 593, eff. May 27, 1982. Renumbered as Rule 592, eff. July 1, 1998.)

RULE 593 CAPTIONS

Captions on orders, decrees, and judgments must refer to all matters covered by the order, decree or judgment, and shall affirmatively state the result or relief. (Former Rule 594, eff. May 27, 1998. Renumbered as Rule 593, eff. July 1, 1998.)

CHAPTER 6
SETTLEMENT CONFERENCES

RULE 610 SETTLEMENT CONFERENCE CALENDARS

The settlement calendar is designed to facilitate the settlement of cases, particularly in personal injury cases. Therefore, all parties and attorneys participating therein will be expected to comply fully with the provisions of this Chapter. (Eff. July 1, 1998.)

Rule 610.1 Voluntary Settlement Calendar

The calendar clerk or the Assigned Judge may set any case for a Voluntary Settlement Conference at the request of any party or the Court's own motion. (Eff. July 1, 1998.)

Rule 610.2 Voluntary Settlement Conference Rules

The rules relating to Mandatory Settlement Conferences shall apply likewise to Voluntary Settlement Conferences. (Eff. July 1, 1998.)

RULE 611 PERSONS WHOSE PRESENCE IS REQUIRED

Plaintiffs, trial counsel, insurance company representatives, defendants in cases other than personal injury cases where there is insurance coverage must attend the settlement conference. In malpractice cases, where a doctor or a hospital's consent to settlement is required, those parties must either be present, or must give the insurance company express consent to settle. (Former Rule 641, eff. Jan. 1, 1989. Renumbered as Rule 611 and amended, eff. July 1, 1998. Amended, eff. July 1, 2002.)

RULE 612 BRIEFS

No less than five (5) days before the settlement conference, each party shall have delivered a settlement statement or brief to the clerk of the department where the conference will be held. The briefs must comply with California Rules of Court, Rule 222, and must also contain:

- (1) Names of all parties and their respective counsel;
- (2) Statement of procedural posture of case; i.e., motions heard to date, discovery completed and/or scheduled with dates for completion provided;
- (3) Statement of Facts;
- (4) Statement of Issues to be Determined;
- (5) Statement Regarding Status of Settlement Discussions including any 1998 offers/counteroffers and last offer made; and;
- (6) A reasonable assessment of the value of the case and reasons for said assessment. Police reports, discovery statements, photographs, and bills should be available for Court inspection, as desired by the Court. (Former Rule 642, eff. Jan. 1, 1989. Renumbered as Rule 612 and amended, eff. July 1, 1998. Amended eff. January 1, 2002.) As amended, eff. July 1, 2002.

RULE 613 DISCOVERY

Discovery should be completed by the time of the Settlement Conference. The Court recognizes that many times counsel will have reserved some discovery pending the outcome of the settlement conference. However, if the Court determines that discovery is not substantially completed, and this will have a significant influence on the settlement, the Settlement Calendar Judge may or refer the matter to the Direct Calendar Judge for such action, as he or she deems appropriate. (Former Rule 643, eff. Jan. 1, 1989. Renumbered as Rule 613, eff. July 1, 1998. Amended, eff. July 1, 2002.)

RULE 614 DEMANDS AND OFFERS

Counsel and the interested parties shall be prepared to state their best demand and offer at the settlement conference. (Former Rule 644, eff. Jan. 1, 1989. Renumbered as Rule 614, eff. July 1, 1998.)

RULE 615 FAILURE TO ATTEND OR BE PREPARED

Unexcused absence from the conference may result in sanctions, and/or striking of pleadings, and/or default proceedings, and/or dismissal of the case. Failure to be prepared may also result in sanctions (Former Rule 614 renumbered to Rule 615 eff. January 1, 1999. Amended, eff. July 1, 2002.)

RULE 616 CONTINUANCES

Continuances or further conference on a continued date may be granted or denied within the discretion of the particular Settlement Conference Judge (Former Rule 615 renumbered to Rule 616 eff. January 1, 1999.)

RULE 617 NOTICE OF SETTLEMENT

Counsel is charged with the responsibility of notifying the Court of any settlement made in the case. This may be telephonic or written. (Former Rule 616 renumbered to Rule 617 eff. January 1, 1999.)

RULE 618 - Repealed

RULE 619 - Repealed

RULE 620 ARBITRATION

The Court encourages the use of alternate dispute resolution, including arbitration in accordance with the California Rules of Court. The Court can also arrange private arbitration or determination or other alternate dispute resolution processes through retired Judges. (Former Rule 650, eff. Jan. 1, 1989. Renumbered as Rule 620, eff. July 1, 1998. Amended, eff. July 1, 2002.)

CHAPTER 7
APPLICATION FOR EX PARTE ORDERS

RULE 710 APPLICATIONS

RULE 711 FEE

No application for an ex parte order, except for the appointment of a guardian ad litem or the approval of an undertaking or an attachment, shall be made until any required filing or other fee has been paid. (Former Rule 911, eff. May 27, 1982. Renumbered as Rule 711, eff. July 1, 1998.)

RULE 712 FORM

Every application for an ex parte order shall be accompanied by the original file of the action. (Former Rule 912, eff. May 27, 1982. Renumbered as Rule 712, eff. July 1, 1998.)

RULE 720 LIMITATIONS ON GRANTING

Except upon a stipulation, leave shall not be granted ex parte to stay execution after judgment, file a cross-complaint, amend or supplement a pleading, other than to strike out the name or substitute the true name of a fictitiously named party. (Former Rule 920, eff. May 27, 1982. Renumbered as Rule 720, eff. July 1, 1998.)

RULE 730 TO WHOM PRESENTED

Rule 730.1 In Particular

Except as otherwise specifically provided by these rules, an application for an ex parte order shall be presented as follows:

Rule 730.2 Civil Ex Parte and Writs

An application involving mandamus, review, prohibition, certiorari, receivers, and habeas corpus in a civil matter shall be presented to the law and motion Judge to whom the case has been assigned. (Eff. July 1, 1998)

Rule 730.3 Criminal Ex Parte and Writs

An application involving a criminal matter shall be presented to the Judge presiding in the criminal department. An application involving mandamus, review, prohibition, certiorari, habeas corpus, and coram nobis in a criminal matter shall be presented to the writ Judge handling criminal writs. (Eff. July 1, 1998)

Rule 730.4 Juvenile Court Ex Parte and Writs

An application involving a Juvenile Court matter shall be presented to the Presiding Judge of the Juvenile Court or to the Juvenile Court Commissioner, in cases in which he or she is authorized to act. (Eff. January 1, 1999.)

Rule 730.5 Family Law

An application involving an order to show cause in a domestic relations matter shall be presented to the Judge or Commissioner presiding in the department designated to hear such matters. (Eff. July 1, 1998)

Rule 730.6 Probate

An application involving a probate matter shall be presented to the Judge presiding in the probate department or to the Commissioner in cases in which he is authorized to act. (Eff. July 1, 1998)

Rule 730.7 Mental Health

An application involving a mental health matter shall be presented to the Judge assigned to the mental health calendar. (Former Rule 931, et seq., eff. May 27, 1982. Renumbered as Rule 730, eff. July 1, 1998.)

RULE 740 PRESENTATION

Rule 740.1 Guardian Ad Litem

Every application for the appointment of a guardian ad litem shall be captioned as the proposed or pending action, be accompanied by the written consent of the person nominated and, if the ward is over fourteen years of age, of the one for whom the guardian is sought. If the latter is a defendant, the application shall state the date on which said defendant was served. No application shall be presented for the nomination of any person who has any adverse interest or which might be prejudicial to the ward or who is not able or disposed to counsel with the ward or to actively and competently prosecute or defend the interest of the ward in the action or proceeding. (Eff. July 1, 1998)

Rule 740.2 Application for Reduction of Undertaking

An application for a reduction in the amount stated by statute for an undertaking on an attachment shall be verified; shall fully set forth facts in the personal knowledge of the affiant or the sources of information of facts averred on information and belief, which tend to show that a reduction would not prejudice the rights of the defendant; the facts purporting to justify the attachment; the amount of the demand; the nature; whether said property is in use and the nature thereof; if the property is a going business, the effect, if any, of the attachment thereof and if the attachment is to be on a sum of money, the date and result of all previous attachments. (Eff. July 1, 1998)

Rule 740.3 Shortening or Extending Time

An application for an order shortening or extending time for the service of a notice shall state any previous extension, any expiration date and the facts showing good cause for granting the application. (Eff. July 1, 1998)

Rule 740.4 Appointment of Counsel for Military Personnel

An application for the appointment of an attorney for a defendant in military service shall state the branch of such service, his service mailing address, when the time to answer or demur expired, whether any pleading has been filed on his behalf, and any other pertinent facts. (Eff. July 1, 1998)

Rule 740.5 Substitute Service, Domestic

An application for an order authorizing service pursuant to Section 3302 of the Corporations Code shall be by affidavit or declaration averring that no designation of an agent for service of process is on file with the Secretary of State (or facts showing the failure to locate a designated agent) corroborated by letter from the Secretary of State and facts showing that service cannot be made upon any person authorized to receive service. (Eff. July 1, 1998)

Rule 740.6 Substitute Service, Foreign

An application for an order authorizing service pursuant to Section 2111 of the Corporations Code shall be by affidavit or declaration averring facts showing the doing of business by the corporation in California, the search made to find a person in the State authorized to receive service, no designation of an agent is on file with the Secretary of State (or the designated agent is no longer authorized to receive service) corroborated by a letter from the Secretary of State. (Eff. July 1, 1998 Amended, eff. July 1, 2003. As amended eff. July 1, 2003.

Rule 740.7 Application for Money Deposited

An application for an order for the payment of money which has been deposited with the clerk of the Court pursuant to Sections 708.710 – 708.750 of the Code of Civil Procedure shall be verified by the applicant, state the amount of money and date it was deposited with the clerk, any amount previously received by the applicant and whether any claim or exemption or motion to vacate the judgment has been filed. The amount of money on deposit shall be endorsed on the application by the Clerk of the Court. (Eff. July 1, 1998 Amended, eff. July 1, 2003)

Rule 740.8 Property Otherwise Deposited

An application to receive personal property or money, other than that deposited under Sections 708.710 – 708.750 of the Code of Civil Procedure, shall be verified by the claimant; state when, why and by whom it was deposited; any term or condition of the deposit; the name and address of every person claiming any interest therein; and the reason the claimant is entitled to receive it. The amount of money or description of the property on deposit shall be endorsed on the application by the clerk. The Judge or Commissioner may require the application to proceed by motion on the notice to all interested persons. (Eff. July 1, 1998)

Rule 740.9 Execution on Installment Order or Judgment

An application for the issuance of a writ of execution as to an order of judgment for the payment of money in installments shall be verified by the judgment creditor and shall set forth the pertinent provisions of the order of judgment, the total amount which has been paid, the amount of principal then due, and the particulars as to any interest claimed. The application shall set forth also the assignment and the date of service or notice thereof to the judgment debtor. (Former Rules 941 through 949, eff. May 27, 1982. Renumbered as Rule 740.1 through 740.9, eff. July 1, 1998.)

CHAPTER 8
CASES UNDER CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

RULE 800 CEQA DESIGNATION

The first page of each paper shall specify immediately below the case number that the case is one filed under the California Environmental Quality Act (CEQA). (Eff. July 1, 2001.)

CHAPTER 9
ECONOMIC LITIGATION

RULE 900 ECONOMIC LITIGATION PROGRAM

RULE 900.1

Except as otherwise provided by law, this Court will follow the Economic Litigation Program pursuant to California Code of Civil Procedure, sections 90 through 100. (Former Rule 582 of the Municipal Court Rules, eff. Aug. 1, 1985; Renumbered as Rule 900, and amended, eff. July 1, 1998.)

CHAPTER 10
UNLAWFUL DETAINER ACTIONS

RULE 1000 UNLAWFUL DETAINER ACTIONS

See California Code of Civil Procedure section 1161 et seq. (Eff. July 1, 1998.)

CHAPTER 11
SMALL CLAIMS

See California Code of Civil Procedure section 116.110 et seq. and California Rules of Court, rules 1701 1706; 1725 through 1727. (Eff. July 1, 1998. Amended, eff. July 1, 2003.)

CHAPTER 12
PROBATE

RULE 1200 PROBATE ACTIONS

The Probate Policy Memorandum found in Appendix I governs probate actions.
(Revised eff. July 1, 1998.)

CHAPTER 13
CRIMINAL RULES

RULE 1300

California Rules of Court shall apply as supplemented by the following local rules. (Eff. July 1, 1998.)

RULE 1301

Felony, misdemeanor and infraction matters shall be scheduled to be heard in the Judicial District where the offense allegedly occurred. That District, which was previously named the Municipal Court Division, shall be known as the Superior Court District.

The Superior Court District that was geographically closest to the former Municipal Court District shall hear the matter. Superior Court Districts are defined pursuant to Rule 130.

RULE 1303

These rules recognize that each District has a calendar system of processing criminal cases. The District calendar procedures remain unchanged by these rules except when they conflict and then these rules supersede. (Eff. July 1, 1998.)

RULE 1304

Preliminary hearings, felony, misdemeanor, and infraction trials are to be heard and assigned pursuant to local Superior Court District rules. Calendar rules that segregated preliminary hearings, misdemeanor, and infraction matters solely within the former Municipal Court jurisdiction are eliminated. (Eff. July 1, 1998 as amended January 1, 1999.)

RULE 1305

Felony preliminary hearings and pre-preliminary hearings shall be set and heard by the criminal Division within each Superior Court District.

Trials on informations, indictments, complaints or citations shall be scheduled within the criminal Division in each Superior Court District. (Eff. July 1, 1998.)

RULE 1306

Counsel may make P.C. 977a appearances with appropriate authority from the client in misdemeanor matters excluding trial (P.C. 997a notwithstanding). Counsel must secure judicial permission for appearance by counsel for trial. (Eff. July 1, 1998.)

RULE 1307

Counsel may limit his/her appearance in felony matters only per P. C. 987.1 for preliminary hearings and initial arraignment on the information. (Eff. July 1, 1998.)

RULE 1308 CRIMINAL LAW & MOTION

All to be heard in the Dept. in which case has been assigned.

All matters on motion calendar shall be set forth in writing and supported by declarations, if appropriate, and points and authorities.

Unless waived, 10 calendar days written notice shall be given to opposing side and filed with clerk no later than 10 calendar days prior to the date set for hearing. (Eff. July 1, 1998. Amended, eff. July 1, 2001.)

RULE 1309 P.C. 1538.5 MOTIONS

A. Misdemeanor

1. Notice shall describe specifically all evidence sought to be suppressed and state any legal theory in support thereof. It shall include a brief summary of facts.
2. Notice shall be filed pursuant to the Criminal Division Calendar Rules then existing in the Superior Court District where the matter is scheduled to be heard.

B. Felony Cases

1. Prior to preliminary hearing pursuant to P. C. 1538.5 as amended effective 1-1-98.
2. After filing the information or indictment, the motions shall be in writing and then filed pursuant to the Criminal Division Calendar Rules in the Superior Court District where the matter is scheduled to be heard. (Former Rule 456, eff. July 1, 1990. Renumbered as Rule 1309 and amended, eff. July 1, 1998.)

RULE 1310 MOTIONS TO QUASH OR TRAVERSE WARRANTS

These motions shall contain the warrant or an exact copy of the warrant and shall be heard in the same manner as outlined in the P.C. 1538.5 motions above. (Eff. July 1, 1998.)

RULE 1311 CRIMINAL COURT COMMUNICATION PROTOCOL

In hearing any case, the judicial officer shall make a reasonable inquiry about the existence of any child custody or visitation orders involving any defendant and victim or witness in the action currently before the Court. (Eff., July 1, 2003.)

RULE 1320 P. C. 995 MOTIONS

Shall be heard in the department scheduled to hear the trial on the case. However, if the trial Court was the committing magistrate, then the Supervising Criminal Law Judge within the District shall reassign the matter for hearing on the motion to another Judge. If the motion is denied on its merits, the case shall be assigned back to the original Judge. (Former Rule 455, eff. May 27, 1982. Renumbered as Rule 1320 and amended, eff. July 1, 1998.)

RULE 1321 MOTIONS TO CONTINUE

Shall be heard per P. C. 1050 in a manner as determined by the Criminal District of the Superior Court District where the case is assigned for trial. (Former Rule 453, eff. May 27, 1982. Renumbered as Rule 1321 and amended, eff. July 1, 1998.)

RULE 1322 TRANSFER OF CASES

Probation Revocation

1. If a defendant has an active, pending case in any Superior Court District, then any revocation of probation case shall be transferred to that District.
2. Supervising Criminal Judges of the respective Districts may transfer cases between them. (Eff. July 1, 1998.)

RULE 1327 VENUE OF ACTIONS

The District attorney should file criminal actions in the judicial District as defined in the Rules of Court, Rule 130, as "District" where the offense occurred. If the district attorney files an action outside of the judicial district where the offense occurred, the supervising Judge of that district shall transfer the case to the district that contains the proper venue. (Eff. January 1, 2000.)

RULE 1328 FEE SCHEDULE FOR APPOINTED CASES IN JUVENILE COURT

1328a	Conference with juvenile, parents, probation officer, includes case preparation, detention hearing or prehearing.....	\$250.00
1328b	Disposition hearing, conference with juvenile, parents, probation officer.....	\$ 85.00
1328c	Jurisdictional one half day.....	\$195.00
	Trial.....	\$250.00 per day, \$150 per half day
1328d	Additional Court appearance/prior to adjudication of the case not for the convenience of the appointed attorney.....	\$50.00
1328e	Prima facie or contested dispositional (not to exceed one-half day).....	\$130.00
1328f	Court appearance after adjudication (annual review, appearance review, change of placement).....	\$ 50.00

(Former Appendix II, Rules 100 and 101, eff. July 1, 1998. Renumbered as Criminal Rules, Rule 1328, eff. January 1, 2000. Amended, eff. July 1, 2001. As amended, eff. January 1, 2002.). Renumbered as Criminal Rules, Rule 1401, eff. January 1, 2004.

RULE 1329 FEE SCHEDULE FOR APPOINTED CRIMINAL CASES-GENERAL

1329a Representation - Criminal Complaints

1329a(1)	Arraignment on felony complaint, entry of initial plea, conferences with defendant, discovery, all court appearances except per Rule 1329b et seq., conferences with prosecutor, preliminary hearing or entry of 859a plea or misdemeanor plea, confirmation of 859a plea and sentencing.....	\$350.00
1329a(2)	Arraignment on misdemeanor complaint, entry of initial plea, all conferences with defendant and/or prosecutor and pre trials, discovery, readiness conferences and sentencing.....	\$300.00

~~1329a(3) Written motions and/or evidentiary hearings, collectively, on a
complaint.....\$50.00 per hour not to exceed a maximum of \$150.00~~

~~1329a(4) Trial on misdemeanor complaint.....\$250.00 per day, \$150.00 per half day~~

~~1329a(5) Appointment to represent the same defendant in additional pending cases:~~

~~Felony case.....\$150.00~~

~~Misdemeanor case.....\$ 75.00~~

~~Violation of Probation — Misdemeanor\$ 35.00~~

~~Violation of Probation — Felony Complaint\$ 50.00~~

~~1329a(6) Appointment to represent a witness\$50 per hour not
to exceed a maximum of \$150.00~~

~~1329a(7) Probation violation hearings Misdemeanor.....\$35.00~~

~~1329(a)(8) Probation violation hearings — Felony Complaint.....\$50.00~~

~~1329(a)(9) Mileage on Felony Complaint cases may be paid at current Court approved
rate in effect on the dates of service at the Court's discretion, and only if case is transferred from
District where attorney was appointed to another courthouse exceeding 30 miles one way from
appointing District.~~

~~1329b — Representation — Criminal Information or Indictment~~

~~1329b(1) Arraignment on information or indictment, entry of plea, conference~~

~~with defendant, discovery, conferences with prosecutor, review transcript~~

~~of preliminary hearing, readiness conference, pre trial calendar, change of plea~~

~~and sentencing\$244.00 \$250.00 if new counsel,~~

~~.....\$150.00 if same attorney~~

~~was appointed on criminal complaint.~~

~~Additional time reasonably expended by the existing attorney or new
counsel shall be paid at the rate of \$49.00 \$50.00 per hour for at the
discretion of the Court.~~

~~1329b(2) Additional Court appearance not for the convenience of the defense~~

~~attorney.....\$50.00~~

~~1329b(3) Preparation and appearances regarding Petition to Revoke Probation~~

~~.....\$195.00~~

~~1329b(4) Trial on information or indictment.....\$390.00 per day,~~

~~.....\$195.00 per half day~~

~~1329b(5) Motion under Penal Code Section 995 or 1538.5 and evidentiary~~

~~motions. Any increase shall be at the discretion of the Court....\$195.00~~

~~1329(b)(6) Appointment to represent same defendant in additional pending criminal~~

~~information/indictment cases.....\$150.00~~

~~1329(b)(7) Probation violation hearings — additional pending criminal~~

~~information/indictment cases.....\$50.00~~

~~1329(b)(8) Mileage on Felony information/indictment cases may be paid at current Court-approved rate in effect on the dates of service at the Court's discretion and only if case is transferred from district where attorney was appointed to another courthouse exceeding 30 miles one-way from appointing District.~~

~~1329c(1) Probation hearing, pronouncement of judgment and related post trial motions
.....\$50.00
Additional time reasonably expended by attorney shall be paid at the rate of \$49.00
\$50.00 per hour for time at the discretion of the Court.~~

~~1329c(2) Probation violation hearings..... \$50.00~~

~~1329d Appointment to represent a witness\$50.00 per hour
not to exceed a maximum of \$150.00~~

~~(Former Appendix II, Rule 102, eff. July 1, 1998. Amended and renumbered as Criminal Rules, Rule 1329, amended eff. July 1, 2000. Amended eff. January 1, 2002. As amended, eff. July 1, 2002.) As amended eff. January 1, 2003.~~

~~RULE 1330 FEE SCHEDULE FOR APPOINTED CRIMINAL CASES -- COMPLEX FELONY~~

~~Complex felony billing rates must have express written approval of the Court unless the case and attorney were listed on the District Attorney's list of death penalty and LWOP cases during the dates of service on the attorney's service claim and attorney was appointed to the case prior to September 1, 1997. Upon application of counsel, prior to pre trial, the criminal calendar Judge may designate complex, non special circumstance cases as "complex felonies," for which the following fee schedule will apply:~~

~~1330a Arraignment, entry of plea, conference with defendant, discovery,
conferences with prosecutor, review transcript of preliminary
hearing, readiness conference and pre trial calendar.....\$270.00
plus. Additional time reasonably expended by attorney shall be paid at the rate
of \$55.00 an hour for time at the discretion of the Court.~~

~~1330a(1) Motion under Penal Code Section 995 or 1538.5 and evidentiary
motions.....\$55.00 per hour~~

~~1330a(2) Additional Court appearance not for the convenience of the defense
attorney..... \$55.00~~

~~1330b Trial.....\$450.00 per day, \$250.00 per half day~~

~~1330c Probation hearing and pronouncement of judgment and related post-
trial motions.....\$55.00~~

~~1330c(1) Probation violation hearings.....\$50.00~~

~~1330c(2) Appointment to represent same defendant in additional pending complex
felony cases.....\$150.00~~

1330c(3) Appointment to represent a witness.....	\$55.00 per hour
1330c(4) Probation violation hearings—additional pending complex criminal cases.....	\$55.00
1330c(5) Preparation and appearances regarding Petition to Revoke Probation.....	\$250.00

~~1330d Mileage may be paid at current court approved rate in effect on the dates of service at the Court's discretion, and only if case is transferred from District courthouse where attorney was appointed to another District courthouse exceeding 30 miles one way from appointing courthouse, and only for mileage in excess of 30 miles.~~

~~(Former Appendix II, Rule 103, eff. July 1, 1998. Renumbered as Criminal Rules, Rule 1330, amended eff. July 1, 2000. Amended, eff. July 1, 2001. Amended eff. January 1, 2002.) As amended January 1, 2003.~~

RULE 1341 FEE SCHEDULE FOR APPOINTED APPEALS CASES

1341a Communications (including client/defendant, previous counsel).....	up to 3.5 hrs at \$50.00 per hour, maximum of \$175.00
1341b Record Review.....	60 pages per hour at \$50.00 per hour
1341c Preparation of Proposed Statement on Appeal.....	\$50.00 per hour
1341d Motions	
— Extension of time.....	up to 0.5 hr at \$50.00 per hour, maximum of \$25.00
— Augment.....	up to 1.5 hrs at \$50.00 per hour, maximum of \$75.00
— Other Motions.....	Reasonable time at Court's discretion at \$50.00 per hour
1341e Appellant's Opening Brief	
— Statement of Facts.....	up to 1/3 of record review time at \$50.00 hour
— Briefed Issues	
— Very Simple.....	up to 2.5 hrs at \$50.00 per hour, maximum of \$125.00
— Simple.....	up to 4 hours at \$50.00 per hour, maximum of \$200.00
— Simple/Average.....	up to 6 hours at \$50.00 per hour, maximum of \$300.00
— Average.....	up to 8 hours at \$50.00 per hour, maximum of \$400.00
— Average/Complex.....	up to 11 hours at \$50.00 per hour, maximum of \$550.00
— Complex.....	up to 13.5 hours at \$50.00 per hour, maximum of \$675.00
— Unbriefed Issues	
— Simple.....	up to 0.5 hours at \$50.00 per hour, maximum of \$25.00
— Average.....	up to 2.5 hours at \$50.00 per hour, maximum of \$125.00
— Complex.....	up to 5 hours at \$50.00 per hour, maximum of \$250.00
1341f Reply Brief.....	up to 1/3 of Appellant's Opening Brief recommendation
1341g Supplemental Brief.....	Appellant's Opening Brief issue standards
1341h Review of Opposing Counsel Brief.....	
.....	up to 2.5 hours at \$50.00 per hour, maximum of \$125.00
.....	0 hours if Wende
1341i Petitions	
— Habeas.....	up to 12 hours at \$50.00 per hour, maximum of \$600.00
— Petition for Rehearing.....	up to 6 hours at \$50.00 per hour, maximum of \$300.00

~~—Petition for Review.....up to 10 hours at \$50.00, maximum of \$500.00~~
~~—Other Petitions.....Reasonable time at Court’s discretion at \$50.00 per hour~~
~~—Review Response.....Reasonable time at the Court’s discretion at \$50.00 per hour~~
~~—Reply to Response.....up to 1/3 of petition time at \$50.00 per hour~~
~~1341j Oral Argument.....up to 7.5 hours at \$50.00, maximum of \$375.00~~
~~1341k Review Opinion.....up to 1.5 hours at \$50.00, maximum of \$75.00~~
~~.....up to 0.2 hours at \$50.00 per hour if Wende, maximum of \$10.00~~

~~1341l Other Services~~

~~Review Superior Court File.....up to 2 hours at \$50.00 per hour, maximum of \$100.00~~
~~—Miscellaneous.....Reasonable time at Court’s discretion at \$50.00 per hour~~

~~1341m Expenses~~

~~Photocopying.....Up to \$.10 per page (10¢/pg) — original receipts or detailed itemization required~~
~~Postage.....Actual, if reasonable at the Court’s discretion — original receipts required~~
~~Telephone.....Actual, if reasonable at the Court’s discretion — copy of bill or phone log required~~
~~Travel.....Attorney mileage may only be reimbursed if authorized in advance by the Court, at the current Court approved rate in effect on the dates of service. Mileage reimbursement will generally only be authorized for travel for interviews to properly prepare a brief.~~
~~Computerized Research.....Ordinary research not compensable~~
~~Paralegal/Law Clerk.....Services on Appellate cases must have specific prior Court approval to be reimbursed, and will be reimbursed up to a maximum rate of \$25.00 per hour. If approved, services must be fully itemized as to specific dates, hours, and activities.~~
~~Expert Witnesses, Investigator, Translator.....Services must have specific prior Court approval to be reimbursed, and will be reimbursed at the same rate allowed for criminal case appointments, and the misdemeanor rate for investigators (\$17.50 per hour). If approved, services must be fully itemized as to specific dates, hours, and activities.~~

~~(Eff. January 1, 2002. Amended eff. January 1, 2003.)~~

CHAPTER 14
COUNSEL/INVESTIGATOR/EXPERT FEES

RULE 1400 APPOINTED ATTORNEY SERVICE FEE SCHEDULES

RULE ~~1328~~ 1401 FEE SCHEDULE FOR APPOINTED CASES IN JUVENILE COURT

1328 <u>1401a</u>	Conference with juvenile, parents, probation officer, includes case preparation, detention hearing or prehearing.....	\$250.00
1328 <u>1401b</u>	Disposition hearing, conference with juvenile, parents, probation officer.....	\$ 85.00
1328 <u>1401c</u>	Jurisdictional one-half day.....	\$195.00
	Trial.....	\$250.00 per day, \$150 per half day
1328 <u>1401d</u>	Additional Court appearance/prior to adjudication of the case not for the convenience of the appointed attorney.....	\$50.00
1328 <u>1401e</u>	Prima facie or contested dispositional (not to exceed one-half day).....	\$130.00
1328 <u>1401f</u>	Court appearance after adjudication (annual review, appearance review, change of placement).....	\$ 50.00

(Former Appendix II, Rules 100 and 101, eff. July 1, 1998. Renumbered as Criminal Rules, Rule 1328, eff. January 1, 2000. Amended, eff. July 1, 2001. As amended, eff. January 1, 2002.).
Former Criminal Rules, Rule 1328, eff. January 1, 2002. Renumbered as Criminal Rules, Rules 1401, eff. January 1, 2004.

RULE ~~1329~~ 1402 FEE SCHEDULE FOR APPOINTED CRIMINAL CASES-GENERAL

~~1329~~ 1402a Representation - Criminal Complaints

1329 <u>1402a(1)</u>	Arraignment on felony complaint, entry of initial plea, conferences with defendant, discovery, all court appearances except per Rule 1329b et seq., conferences with prosecutor, preliminary hearing or entry of 859a plea or misdemeanor plea, confirmation of 859a plea and sentencing.....	\$350.00
1329 <u>1402a(2)</u>	Arraignment on misdemeanor complaint, entry of initial plea, all conferences with defendant and/or prosecutor and pre-trials, discovery, readiness conferences and sentencing.....	\$300.00
1329 <u>1402a(3)</u>	Written motions and/or evidentiary hearings, collectively, on a complaint.....	\$50.00 per hour not to exceed a maximum of \$150.00

~~1329~~ 1402a(4) Trial on misdemeanor complaint.....\$250.00 per day, \$150.00 per half day

~~1329~~ 1402a(5) Appointment to represent the same defendant in additional pending cases:

Felony case.....\$150.00

Misdemeanor case.....\$ 75.00

Violation of Probation – Misdemeanor\$ 35.00

Violation of Probation – Felony Complaint\$ 50.00

~~1329~~ 1402a(6) Appointment to represent a witness\$50 per hour not to exceed a maximum of \$150.00

~~1329~~ 1402a(7) Probation violation hearings Misdemeanor.....\$35.00

~~1329~~ 1402(a)(8) Probation violation hearings – Felony Complaint.....\$50.00

~~1329~~ 1402(a)(9) Mileage on Felony Complaint cases may be paid at current Court-approved rate in effect on the dates of service at the Court’s discretion, and only if case is transferred from District where attorney was appointed to another courthouse exceeding 30 miles one-way from appointing District.

~~1329~~ 1402b Representation - Criminal Information or Indictment

~~1329~~ 1402b(1) Arraignment on information or indictment, entry of plea, conference with defendant, discovery, conferences with prosecutor, review transcript of preliminary hearing, readiness conference, pre-trial calendar, change of plea and sentencing~~\$244.00~~ \$250.00 if new counsel,\$150.00 if same attorney was appointed on criminal complaint. Additional time reasonably expended by the existing attorney or new counsel shall be paid at the rate of ~~\$49.00~~ \$50.00 per hour for at the discretion of the Court.

~~1329~~ 1402b(2) Additional Court appearance not for the convenience of the defense attorney..... \$50.00

~~1329~~ 1402b(3) Preparation and appearances regarding Petition to Revoke Probation\$195.00

~~1329~~ 1402b(4) Trial on information or indictment.....\$390.00 per day,\$195.00 per half day

~~1329~~ 1402b(5) Motion under Penal Code Section 995 or 1538.5 and evidentiary motions. Any increase shall be at the discretion of the Court....\$195.00

~~1329~~ 1402(b)(6) Appointment to represent same defendant in additional pending criminal information/indictment cases.....\$150.00

~~1329~~ 1402(b)(7) Probation violation hearings – additional pending criminal

information/indictment cases.....\$50.00

~~1329~~ 1402(b)(8) Mileage on Felony information/indictment cases may be paid at current Court-approved rate in effect on the dates of service at the Court's discretion and only if case is transferred from district where attorney was appointed to another courthouse exceeding 30 miles one-way from appointing District.

~~1329~~ 1402c(1) Probation hearing, pronouncement of judgment and related post-trial motions\$50.00
Additional time reasonably expended by attorney shall be paid at the rate of ~~\$49.00~~ \$50.00 per hour for time at the discretion of the Court.

~~1329~~ 1402c(2) Probation violation hearings..... \$50.00

~~1329~~ 1402d Appointment to represent a witness\$50.00 per hour
not to exceed a maximum of \$150.00

~~(Former Appendix II, Rule 102, eff. July 1, 1998. Amended and renumbered as Criminal Rules, Rule 1329, amended eff. July 1, 2000. Amended eff. January 1, 2002. As amended, eff. July 1, 2002.) As amended eff. January 1, 2003. Former Criminal Rules, Rule 1329, eff. January 1, 2003. Renumbered as Criminal Rules, Rule 1402, eff. January 1, 2004.~~

RULE ~~1330~~ 1403 FEE SCHEDULE FOR APPOINTED CRIMINAL CASES - COMPLEX FELONY

Complex felony billing rates must have express written approval of the Court unless the case and attorney were listed on the District Attorney's list of death penalty and LWOP cases during the dates of service on the attorney's service claim and attorney was appointed to the case prior to September 1, 1997. Upon application of counsel, prior to pre-trial, the criminal calendar Judge may designate complex, non-special circumstance cases as "complex felonies," for which the following fee schedule will apply:

~~1330~~ 1403a Arraignment, entry of plea, conference with defendant, discovery, conferences with prosecutor, review transcript of preliminary hearing, readiness conference and pre-trial calendar.....\$270.00
~~plus.~~ Additional time reasonably expended by attorney shall be paid at the rate of \$55.00 an hour for time at the discretion of the Court.

~~1330~~ 1403a(1) Motion under Penal Code Section 995 or 1538.5 and evidentiary motions.....\$55.00 per hour

1330 <u>1403a(2)</u>	Additional Court appearance not for the convenience of the defense attorney.....	\$55.00
1330-1403b	Trial.....	\$450.00 per day, \$250.00 per half day
1330 <u>1403c</u>	Probation hearing and pronouncement of judgment and related post-trial motions.....	\$55.00
1330-1403c(1)	Probation violation hearings.....	\$50.00
1330 <u>1403c(2)</u>	Appointment to represent same defendant in additional pending complex felony cases.....	\$150.00
1330-1403c(3)	Appointment to represent a witness.....	\$55.00 per hour
1330 <u>1403c(4)</u>	Probation violation hearings – additional pending complex criminal cases.....	\$55.00
1330 <u>1403c(5)</u>	Preparation and appearances regarding Petition to Revoke Probation.....	\$250.00
1330 <u>1403d</u>Mileage may be paid at current court approved rate in effect on the dates of service at the Court's discretion, and only if case is transferred from District courthouse where attorney was appointed to another District courthouse exceeding 30 miles one-way from appointing courthouse, and only for mileage in excess of 30 miles.	

~~(Former Appendix II, Rule 103, eff. July 1, 1998. Renumbered as Criminal Rules, Rule 1330, amended eff. July 1, 2000. Amended, eff. July 1, 2001. Amended eff. January 1, 2002.) As amended January 1, 2003. Former Criminal Rules, Rule 1330, eff. January 1, 2003. Renumbered as Criminal Rules 1403, eff January 1, 2004.~~

RULE ~~1341~~ 1404 FEE SCHEDULE FOR APPOINTED APPEALS CASES

1341 <u>1404a</u>	Communications (including client/defendant, previous counsel).....	up to 3.5 hrs at \$50.00 per hour, maximum of \$175.00
1341 <u>1404b</u>	Record Review.....	60 pages per hour at \$50.00 per hour
1341 <u>1404c</u>	Preparation of Proposed Statement on Appeal	\$50.00 per hour
1341 <u>1404d</u>	Motions	
	Extension of time.....	up to 0.5 hr at \$50.00 per hour, maximum of \$25.00
	Augment.....	up to 1.5 hrs at \$50.00 per hour, maximum of \$75.00
	Other Motions.....	Reasonable time at Court's discretion at \$50.00 per hour

~~1344~~ 1404e Appellant's Opening Brief

Statement of Facts.....up to 1/3 of record review time at \$50.00 hour

Briefed Issues

Very Simple.....up to 2.5 hrs at \$50.00 per hour, maximum of \$125.00

Simple.....up to 4 hours at \$50.00 per hour, maximum of \$200.00

Simple/Average.....up to 6 hours at \$50.00 per hour, maximum of \$300.00

Average.....up to 8 hours at \$50.00 per hour, maximum of \$400.00

Average/Complex.....up to 11 hours at \$50.00 per hour, maximum of \$550.00

Complex.....up to 13.5 hours at \$50.00 per hour, maximum of \$675.00

Unbriefed Issues

Simple.....up to 0.5 hours at \$50.00 per hour, maximum of \$25.00

Average.....up to 2.5 hours at \$50.00 per hour, maximum of \$125.00

Complex.....up to 5 hours at \$50.00 per hour, maximum of \$250.00

~~1344~~ 1404f Reply Brief.....up to 1/3 of Appellant's Opening Brief recommendation

~~1344~~ 1404g Supplemental Brief.....Appellant's Opening Brief issue standards

~~1344~~ 1404h Review of Opposing Counsel Briefup to 2.5 hours at \$50.00 per hour, maximum of \$125.000 hours if Wende

~~1344~~ 1404i Petitions

Habeas.....up to 12 hours at \$50.00 per hour, maximum of \$600.00

Petition for Rehearing.....up to 6 hours at \$50.00 per hour, maximum of \$300.00

Petition for Review.....up to 10 hours at \$50.00, maximum of \$500.00

Other Petitions.....Reasonable time at Court's discretion at \$50.00 per hour

Review Response.....Reasonable time at the Court's discretion at \$50.00 per hour

Reply to Response.....up to 1/3 of petition time at \$50.00 per hour

~~1344~~ 1404j Oral Argument.....up to 7.5 hours at \$50.00, maximum of \$375.00

~~1344~~ 1404k Review Opinion.....up to 1.5 hours at \$50.00, maximum of \$75.00.....up to 0.2 hours at \$50.00 per hour if Wende, maximum of \$10.00

~~1344~~ 1404l Other Services

Review Superior Court File.....up to 2 hours at \$50.00 per hour, maximum of \$100.00

Miscellaneous.....Reasonable time at Court's discretion at \$50.00 per hour

~~1344~~ 1404m Expenses

Photocopying.....Up to \$.10 per page (10¢/pg) – original receipts or detailed itemization required

Postage.....Actual, if reasonable at the Court's discretion – original receipts required

Telephone.....Actual, if reasonable at the Court's discretion -
copy of bill or phone log required

Travel.....Attorney mileage may only be
reimbursed if authorized in advance by the Court, at the current Court approved rate in
effect on the dates of service. Mileage reimbursement will generally only be authorized
for travel for interviews to properly prepare a brief.

Computerized Research.....Ordinary research not compensable

Paralegal/Law Clerk.....Services on Appellate cases must have specific prior Court approval
to be reimbursed, and will be reimbursed up to a maximum rate of \$25.00 per hour. If
approved, services must be fully itemized as to specific dates, hours, and activities.

Expert Witnesses, Investigator, Translator.....Services must have specific prior
Court approval to be reimbursed, and will be reimbursed at the same rate allowed for
criminal case appointments, and the misdemeanor rate for investigators (\$17.50 per
hour). If approved, services must be fully itemized as to specific dates, hours, and
activities.

~~(Eff. January 1, 2002. Amended eff. January 1, 2003.)~~ Former Criminal Rules, Rule 1341, eff.
January 1, 2003. Renumbered as Criminal Rules, Rule 1404, eff. January 1, 2004.

**RULE 1417 1405 FEE SCHEDULE FOR APPOINTED CIVIL AND FAMILY LAW
CASES**

**1340 1405a Representation – Civil and Family Law Cases, Guardianship and
Probate/Conservatorship Cases**

1340 1405a(1) Appointment, entry of plea, conferences, includes case preparation and
appearances.....\$300.00

1340 1405a(2) Written motions and/or evidentiary hearings, collectively on a complaint
.....\$50.00/hr not to exceed maximum of \$150.00

1340 1405a(3) Trial on civil or family law complaint.....\$250.00 per day, \$150.00 per half day

1340 1405a(4) Additional Court appearance not for the convenience of appointed attorney.
.....\$50.00

1340 1405a(5) Preparation and appearances regarding stipulated agreements.....\$50.00

1340 1405a(6) Court ordered supervision by the attorney of the minor children for purposes of
visitation.....\$50.00/hr not to exceed a maximum of \$100.00

1340 1405a(7) Mileage may be paid at current Court approved rate in effect on the dates of
service for home visits made by the attorney for minor children.

1340 1405a(8) Hourly Rate for out of court preparation time reasonably expended at the Court's
discretion.....\$50.00/hr

(Eff. January 1, 2001. Amended, eff. July 1, 2001.) (Former Criminal Rules, Rule 1340, eff. January 1, 2001 and amended, eff. July 1, 2001. Renumbered as Criminal Rules, 1417, and amended, eff. January 1, 2003.) Former Criminal Rules, Rule 1340, renumbered as Criminal Rules, Rule 1417, and amended, eff. January 1, 2003. Renumbered as Criminal Rules, Rule 1405, eff. January 1, 2004.

RULE 1410 ATTORNEY FEE PAYMENTS - GENERAL

RULE 1411

All ~~requests~~ claims for attorney service payments must be submitted on Superior Court of California, County of San Bernardino forms. (Eff. July 1, 1998) As amended, eff. January 1, 2004.

RULE 1412

All requests for payment of fees shall include claimant's California State Bar number. (Eff. July 1, 1998)

RULE 1413

All claims shall be fully itemized as to specific dates, hours, activities case name case number ~~primary charge~~ and date of appointment and primary charge in criminal cases. When hourly billing is allowed under the Court's Professional ~~professional~~ Services Fee Schedule ~~schedule~~ and at the discretion of the Court, the minimum reported increment should be 0.25 hours (15 minutes). Claims submitted for court-appointed services shall follow the Court's Professional Services Fee Schedule in effect at the time of appointment. (Eff. July 1, 1998; amended ~~eff~~ July 1, 2000. ~~As amended~~, eff. July 1, 2001. As amended, eff. January 1, 2004.)

RULE 1414

All claims shall be submitted in a timely manner. Claims shall be submitted, on Court forms to the Court where the case is heard within 60 days of completion of the case. Failure to submit a claim within 60 days may result in a penalty of up to 5% per six-month period late, up to a maximum of 20%, at the discretion of the Court. Any claim submitted greater than 2 years that the Court cannot verify has not been previously paid shall be denied. For the purposes of the Rule, completion of the case is defined as conclusion of the Pronouncement of Judgement in criminal matters, conclusion of the Dispositional Hearing in juvenile matters, grant or denial of permanent Petition in guardianships, and Entry of Judgement or Order modifying custody in Family Law matters. Billing should be for all services provided to that point. Statements for post-dispositional activities are to be submitted within 60 days of the hearing. If an attorney submits a Declaration re: Attorneys Fees claim form before the end of a case, and out-of-court time is being claimed a copy of any prior billings for the same case must be submitted with subsequently billings. The Courthouse staff shall review that statement to verify days and dates of service and billing amounts and submit it to the appropriate Judge, noting any deviations from Court rule or policy. The Judge shall approve the statement or modify it as appropriate. (Former Rule 1110, eff. Jan. 1, 1993. Renumbered as Rule 1411 through 1414 and amended eff. July 1, 1998. Amended, July 1, 2000, January 1, 2001 and July 1, 2001. As amended, eff. January 1, 2003.)

RULE 1415 ORDINARY FEES

The above fee provisions in Chapter 14 will cover the usual and ordinary handling of a ~~criminal~~ an appointed case, including ordinary office expenses. However, expenses reasonably and necessarily incurred by counsel, including costs of service and process, copies of documents and long-distance telephone calls, may be reimbursed. Counsel must provide the Court with the original receipts for such expenses before any request for reimbursement or payment will be processed. ~~Expenses for experts or psychotherapists and investigation services and any~~ Any single expense item in excess of \$50.00 ~~shall not be incurred without prior express written approval from the Court as provided in Rule 1451.~~ must have specific prior Court approval to be reimbursed. Investigator and expert services must follow Rule 1451, et seq. (Former Criminal Rules, 1331, eff. July 1, 2000 and amended, eff. July 1, 2001. Renumbered as Criminal Rules, Rule 1415, and amended, eff. January 1, 2003.) As amended, eff. January 1, 2004.

RULE 1416 EXTRAORDINARY ATTORNEY FEES

In cases where, because of complexities thereof, the seriousness of the charge or novel legal principles being involved, extensive research, trial preparation and investigation are required, additional extraordinary fees may be allowed at the discretion of the Court. Requests for extraordinary fees must be made by written motion with appropriate supporting declaration and receive prior approval of the Court. It should be understood that extraordinary fees are not designed to cover the routine or usual legal services or ordinary office expenses. Special expenses, including any single expense item in excess of \$50.00 must have specific prior Court approval to be reimbursed. If approved, original receipts are still required for payment to be processed. Investigator and expert services must follow Local Rule 1451, et seq. An itemized statement of the services rendered or to be rendered shall accompany any application for a fee in addition to any attorney service fee schedule in this chapter because of extraordinary services. (Former Criminal Rules, Rule 1332, eff. January 1, 2000 and amended, eff. January 1, 2002. Renumbered as Criminal Rules, 1416, and amended, eff. January 1, 2003. As amended, eff. January 1, 2004.)

RULE 1417 FEE SCHEDULE FOR APPOINTED CIVIL AND FAMILY LAW CASES

1340a Representation Civil and Family Law Cases

1340a(1) ~~Appointment, entry of plea, conferences, includes case preparation and appearances.....~~ \$300.00

1340a(2) ~~Written motions and/or evidentiary hearings, collectively on a complaint~~ \$50.00/hr not to exceed maximum of \$150.00

1340a(3) ~~Trial on civil or family law complaint.....~~ \$250.00 per day, \$150.00 per half day

1340a(4) ~~Additional Court appearance not for the convenience of appointed attorney:~~ \$50.00

1340a(5) ~~Preparation and appearances regarding stipulated agreements.....~~ \$50.00

1340a(6) ~~Court ordered supervision by the attorney of the minor children for purposes of~~

~~visitation.....\$50.00/hr not to exceed a maximum of \$100.00~~

~~1340a(7) Mileage may be paid at current Court approved rate in effect on the dates of service for home visits made by the attorney for minor children.~~

~~1340a(8) Hourly Rate for out of court preparation time reasonably expended at the Court's discretion.....\$50.00/hr~~

~~(Eff. January 1, 2001. Amended, eff. July 1, 2001.) (Former Criminal Rules, Rule 1340, eff. January 1, 2001 and amended, eff. July 1, 2001. Renumbered as Criminal Rules, 1417, and amended, eff. January 1, 2003.) Renumbered as Criminal Rules, Rule 1405, eff. January 1, 2004.~~

RULE 1450.2 1418 DETERMINATION OF REASONABLE COMPENSATION AND NECESSARY EXPENSES FOR PRIVATE COUNSEL

In each case in which a person has been furnished services of private counsel at public expense, upon conclusion of the proceedings, the Court shall make a determination of the sum that is reasonable for compensation and necessary expenses. Payment will be based on the Court's professional service fee schedule available on the court's website www.sbcounty.gov/courts, and from the Court Executive Office. Special expenses, including any single expense item in excess of \$50.00, will be deemed unreasonable unless authorized in advance. Original receipts are required for expense reimbursement. ~~(Eff. July 1, 1998) Renumbered as Rule 1450.2 and amended, eff. July 1, 2000.) As amended eff. January 1, 2003. (Former Criminal Rules, Rule 1450.2, eff. July 1, 2003. Renumbered as Criminal Rules, Rule 1418, eff. January 1, 2004)~~

RULE 1450.3 1419 COUNSEL IN DEATH PENALTY/LWOP CASES

The Public Defender of San Bernardino County shall represent all indigent persons charged with a capital or LWOP life-without-possibility-of-parole (LWOP) case. If the Public Defender declares a conflict of interest and/or is relieved from representing a person charge with a capital or LWOP case, then the Court shall appoint counsel from the "Capital/LWOP Case Panel." The Court and counsel shall adhere to the requirements and procedures of the Capital/LWOP Case Panel.

The San Bernardino County Superior Court established a Capital/Life Without Parole (LWOP) Case Panel of qualified attorneys to be appointed to represent indigent defendants in Capital and LWOP cases. Every attorney who has permitted his or her name to be included on and to remain on the Capital Case Panel agrees to accept the appointment in Capital and/or LWOP cases according to the terms of the Fee Schedule Agreement for Capital/LWOP Case Appointments, in effect for cases appointed after September 1, 1997.

~~(Former Criminal Rule 1323, eff. July 1, 1998, and Appendix III, eff. July 1, 1998. Renumbered as Rule 1450.3 and amended, eff. July 1, 2000.) (Former Criminal Rules, Rule 1450.3, eff. July 1, 2000. Renumbered as Criminal Rules, Rule 1419, and amended, eff. January 1, 2004)~~

RULE 1420 TORT CASE INVOLVING A MINOR, INSANE OR INCOMPETENT PERSON

Counsel fees in excess of the following schedule ordinarily will be considered unreasonable in tort actions compromised under Section 3600 of the Probate Code: (Eff. July 1, 1998, amended eff. July 1, 2000)

RULE 1421 SETTLEMENT MORE THAN TWO WEEKS PRIOR TO ACTION BEING ASSIGNED TO A DEPARTMENT FOR TRIAL

Up to twenty-five percent of the settlement amount (Eff. July 1, 1998, amended eff. July 1, 2000)

RULE 1422 SETTLEMENT WITHIN TWO WEEKS OF OR DURING TRIAL

Up to thirty-three and one-third percent of the settlement amount. (Eff. July 1, 1998; amended eff. July 1, 2000)

RULE 1424 COMPUTATION OF FEES

In computing fees the Court will require parents claiming reimbursement for medical expenses, etc. to pay their proportionate share of the counsel fees except in cases of hardship. Reasonable costs incurred or paid by the counsel that are itemized and accompanied by appropriate vouchers, or other supporting evidence, will be allowed except they shall not be included in the amount of the settlement of judgment on which fees are computed. (Eff. July 1, 1998)

RULE 1425 APPLICATION

No attorney's fees for services rendered on behalf of a minor in any action to which such minor is a party shall be fixed or allowed, or contract therefor approved except upon application therefor made in open Court, after notice to the minor, if of the age of 12 years or over, and to his or her guardian and to such of his or her parents as reside in this state. The notice shall state the character and extent of the services rendered, or to be rendered, and any expenses incurred in connection therewith, shall state the sum which counsel regard as a reasonable fee, and shall state that the minor, his guardian or parents may at the time noticed, in person or by attorney, object to the allowance of the amount asked. (Former Rules 1111 et seq., eff. May 27, 1982. As amended, eff. July 15, 1985.)

RULE 1430 CONTRACT

When an attorney's fee is allowed on a recovery on a promissory note or other contract providing for payment of a reasonable attorney's fee, and no foreclosure of a mortgage or trust deed is involved, a reasonable attorney's fee shall be deemed to be the amount computed by applying to the amount recovered, exclusive of costs, the appropriate schedule hereinafter set forth, in addition to which a further allowance may be made for extraordinary services, in compliance with Chapter 920. (Eff. July 1, 1998)

RULE 1431 DEFAULT ACTION ON NOTE OR CONTRACT, EXCLUSIVE OF COSTS

25 percent of first \$ 1,000 with a minimum fee of \$ 75.00
10 percent of next \$14,000
3 percent of next \$35,000
2 percent of next \$50,000
1 percent of the amount over \$100,000

When the clerk is authorized by statute to enter judgment in an action upon a contract providing for an attorney's fee, the foregoing schedule shall be used by the clerk in determining the amount to be included in the judgment, but in no event shall the amount included by the clerk exceed the amount of attorney's fees prayed for. (Eff. July 1, 1998)

RULE 1432 CONTESTED ACTION ON NOTE OR CONTRACT, EXCLUSIVE OF COSTS

At the discretion of the trial Judge and subject to proof. (Former Rule 1112, et seq., eff. May 27, 1982. Renumbered as Rules 1430, 1431 and 1432, eff. July 1, 1998.)

RULE 1433 FORECLOSURE

Rule 1433.1

When an attorney's fee is allowed on the foreclosure of a mortgage, trust deed, security agreement or mechanic's lien, a reasonable attorney's fee shall be deemed to be that computed under subdivisions 1431 and 1432 increased by ten percent, in addition to which a further allowance may be made for extraordinary services, in compliance with Chapter 1440. (Eff. July 1, 1998)

Rule 1433.2

When an attorney's fee is allowed on the foreclosure of a lien for a street assessment or other assessment, or of a bond issued for the cost of a public improvement, except in cases where other provision is made by law, the attorney's fee shall be computed as provided in 1431 and 1432 of this rule; except that the minimum shall be \$75.00, where only one assessment or bond is being foreclosed in the action, and \$20.00 additional for each additional assessment or bond being foreclosed in the same action. An additional allowance may be made for extraordinary services in compliance with Chapter 1440. (Former Rule 1113, et seq., eff. May 27, 1982. Renumbered as Rule 1433 et seq. and amended, eff. July 1, 1998.)

RULE 1434 IN DISSOLUTION, LEGAL SEPARATION OR NULLITY ACTION

The following counsel fees will be awarded under normal circumstances in marriage dissolution, legal separation or nullity action, exclusive of costs: (Eff. July 1, 1998)

Rule 1434.1

Hear as Default (Without Order to Show Cause): \$300.00. (Eff. July 1, 1998)

Rule 1434.2

Order to Show Cause for Initial Allowance or Other Relief: \$350.00 (contingent upon showing of efforts of counsel before hearing to obtain stipulation or agreement of parties). (Eff. July 1, 1998)

Rule 1434.3

Subsequent Order to Show Cause Hearing for Modification of Order, Contempt, or otherwise: \$200.00 to \$300.00. (Eff. July 1, 1998)

Rule 1434.4

Trial (contested): \$350.00 per diem. (Eff. July 1, 1998)

Rule 1434.5

Counsel who has obtained an order for fees will be deemed to have waived any objection to going to trial before the payment of said fees unless he makes objections to the Presiding Judge at least five days before the date set for trial. (Former Rule 1114, et seq., eff. May 27, 1982. Renumbered as Rule 1434 et seq., eff. July 1, 1998; amended eff. July 1, 2000)

RULE 1440 EXTRAORDINARY FEES

~~— An itemized statement of the services rendered or to be rendered shall accompany any application for a fee in addition to a foregoing schedule because of extraordinary services. (Eff. July 1, 1998) (Deleted, eff. January 1, 2004)~~

RULE 1450 TYPES OF COUNSEL (Deleted, eff. January 1, 2004)

RULE 1450.1 COURT-APPOINTED COUNSEL (Deleted, eff. January 1, 2004)

RULE 1450.2 DETERMINATION OF REASONABLE COMPENSATION AND NECESSARY EXPENSES FOR PRIVATE COUNSEL

~~— In each case in which a person has been furnished services of private counsel at public expense, upon conclusion of the proceedings, the Court shall make a determination of the sum that is reasonable for compensation and necessary expenses. Payment will be based on the Court's professional service fee schedule available on the court's website www.sbcounty.gov/courts, and from the Court Executive Office. Special expenses, including any single expense item in excess of \$50.00, will be deemed unreasonable unless authorized in advance. Original receipts are required for expense reimbursement. (Eff. July 1, 1998) Renumbered as Rule 1450.2 and amended, eff. July 1, 2000.) As amended eff. January 1, 2003. (Renumbered as Criminal Rules, Rule 1418, eff. January 1, 2004)~~

RULE 1450.3 COUNSEL IN DEATH PENALTY/LWOP CASES

~~The Public Defender of San Bernardino County shall represent all indigent persons charged with a capital or LWOP case. If the Public Defender declares a conflict of interest and/or is relieved from representing a person charge with a capital or LWOP case, then the Court shall appoint counsel from the "Capital/LWOP Case Panel." The Court and counsel shall adhere to the requirements and procedures of the Capital/LWOP Case Panel.~~

~~—The San Bernardino County Superior Courts established a Capital/Life Without Parole (LWOP) Case Panel of qualified attorneys to be appointed to represent indigent defendants in Capital and LWOP cases. Every attorney who has permitted his or her name to be included on and to remain on the Capital Case Panel agrees to accept the appointment in Capital and/or LWOP cases according to the terms of the Fee Schedule Agreement for Capital/LWOP Case Appointments, in effect for cases appointed after September 1, 1997.~~

~~(Former Criminal Rule 1323, eff. July 1, 1998, and Appendix III, eff. July 1, 1998. Renumbered as Rule 1450.3 and amended, eff. July 1, 2000.) (Renumbered as Criminal Rules, Rule 1419, and amended, eff. January 1, 2004)~~

RULE 1451 APPOINTMENTS OF INVESTIGATORS, LEGAL RUNNERS AND OTHER EXPERTS

All motions for appointment of investigators and other experts (medical, criminalists, etc. are to be presented to the judge in the department of the Court where the case is assigned for appropriate orders. Such motions must state the billing rate, which billing rate shall be consistent with the Court's Fee Schedule, and the maximum amount expected to be charged for the service of the investigator, expert or other, and must specify if special expenses, including the costs of other experts, travel other than mileage expenses, and any single expense item in excess of \$50.00, are to be authorized.

Investigator services should be limited to actual investigative work and related activities such as testimony. Extraordinary amounts of time attending attorneys in court are discouraged unless testimony is involved. Extraordinary amounts of time conferring with attorneys are discouraged unless it involves the investigator's direct services.

For time on standby at court, the description of the service should include a notation that service was performed at the request of the Court or defense counsel.

Legal runner services, when appointed by the Court, should be limited to photocopying, and transporting materials, orders and motions. Visitations to West Valley Detention Center must be associated with an allowable billable activity, and will be subject to the discretion of the Court.

Paralegal services must be performed under the direction and supervision of an active member of the State Bar of California consistent with the Business and Professions Code § 6450, et seq., and appointments shall generally be limited to capital or life without parole (LWOP) cases.

Motions for appointment of investigators and experts in capital cases involving indigent defendants will be made pursuant to the provisions of Penal Code Section 987.9 and Rule 1460.8. Penalty phase coordinators, when appointed by the Court, will be compensated up to a maximum of \$40.00 per hour, and services should be limited to coordinating the various aspects of investigators, experts and witnesses for the penalty (mitigation) phase, and to activities which would not normally be performed by an investigator or paralegal appointed for the case pursuant to this Rule.

In non-capital cases not included under Section 987.9, motions for the appointment of investigators and experts to assist appointed counsel for indigent defendants must be supported by affidavit or declaration of ultimate facts indicating that the case or circumstances of the case are of such a nature as to require, in the interest of justice, the services of an investigator or other expert.

~~Any investigator or expert appointed to assist in the defense of indigent defendants shall be selected from an approved Court list and shall be compensated according to the Court's~~

~~approved fee schedule. Exception to this rule shall be made only with the express prior approval of a Judge of the Court.~~

The provisions of this rule shall apply to all cases filed under Sections 601 and 602 of the Welfare and Institutions Code, except:

- (1) Motions shall be presented to the Presiding Judge of the Juvenile Court, or to such other judicial officers sitting in juvenile Court as the Presiding Judge shall designate; and,
- (2) All references to defendants shall be deemed to refer to minors. (Former Criminal Rule 1131, eff. May 27, 1982. Amended eff. April 1, 1985; July 1, 1988; Jan. 1, 1990; Jan. 1, 1991. Renumbered as Criminal Rule 1451 and amended July 1, 1998. Amended eff. July 1, 2000. ~~Amended, eff. January 1, 2001. Amended eff. January 1, 2002.)~~ As Amended, eff. January 1, 2003. July 1, 2000, January 1, 2001, January 1, 2002 and January 1, 2003. As amended, eff. January 1, 2004.

RULE 1460 INVESTIGATOR, LEGAL RUNNER AND EXPERT FEES

Rule 1460.1 Claims for Payment

All claims for investigators and experts shall be submitted in a timely manner. Claims shall be submitted on Superior Court of California, County of San Bernardino forms to the court ~~Court~~ where the case is heard within 60 days of completion of the case. For the purposes of the Rule, completion of the case is defined as conclusion of the Pronouncement of Judgement in criminal matters. Billing should be for all services provided to that point. A file stamped copy of the Court order of appointment must accompany all claims for investigation and expert services. All claims for investigators and experts shall be submitted to the courthouse where the case was heard. The Courthouse staff shall determine if an appropriate Court Order is attached to the claim, and shall verify any in-Court time listed on the claim.

Billings must be signed by defense counsel as appropriate in the space provided prior to submittal to the Court for payment. For *in propria persona* (pro per) cases, the claim will be forwarded to the Court Verifying Official for signature.

All investigator and expert claims must be printed in chronological order, and shall be fully itemized as to specific dates, hours, and activities, case name, and case number, and appointment date ~~in criminal cases~~. The minimum reported increment shall be 0.25 hours (15 minutes). Claims submitted for court-appointed services shall follow the Court's Professional Services Fee Schedule in effect at the time of appointment.

(a) For most activities, including general investigation, witness interviews and subpoena services, names, although helpful, are not required; however, location is required.

(b) For activities involving meetings with defense counsel, experts, or others providing services or supplies for the defense, both names and area/location must be provided.

Ordinary office expenses and general office overhead will not be reimbursed. Extraordinary expenses will be allowed upon presentation of original receipts, except:

(a) If expenses total less than \$10.00 per claim, an itemized listing will be accepted in lieu of original receipts.

(b) If a phone log of long distance calls, by case, is kept, this will be accepted in lieu of original phone bills.

Special expenses, including any single expense item in excess of \$50.00, costs of other experts, including transcription services), and travel other than mileage expenses must have specific prior Court approval to be reimbursed. If approved, original receipts are still required for payment to be processed.

(Criminal Rules, Rule 1460.1, eff. July 1, 1998, and former Appendix III, Rule 1460, eff. July 1, 1998; renumbered as Criminal Rule 1460.1 and amended, eff. July 1, 2000. Amended, eff. July 1, 2001. As amended, eff. January 1, 2004.)

Rule 1460.2 Investigators and Legal Runner Fee Schedules

Juvenile and Misdemeanor.....	\$17.50/hr.
Family Law and Guardianship	\$20.00 hr
General Felony.....	\$20.00/hr.
Capital/Life Without Parole.....	\$25.00/hr.
Legal Runner	\$15.00/hr
Mileage	Current Court-approved rate in effect for dates of service
Per diem (<u>associated with authorized overnight travel</u>)*.....	\$25.00/day

*Excess charges greater than the \$25 allowance may be authorized at the Court's discretion under special circumstances – original receipts are mandatory to obtain reimbursement over the allowable per diem rate. Alcohol-related beverages will not be reimbursed.

(Former Appendix III, Rule 1460, eff. July 1, 1998. Renumbered as Criminal Rule 1460.2 and amended, eff. July 1, 2000. As amended, eff. January 1, 2002. As amended, eff. July 1, 2002.) Amended January 1, 2002 and July 1, 2002. As amended, eff. January 1, 2004.

Rule 1460.3 Expert Fee Schedules

~~Criminalists, chemists, fingerprint, graphics, handwriting, engineering, eyewitness identification, financial planning, accident reconstruction, polygraph and death penalty experts~~ Experts other than MD's and Ph.D's or equivalent will be compensated up to a maximum of \$80.00 per hour, \$350.00 for half day of testimony and \$600.00 for a full day of testimony. Transcription services are deemed to be an expert service; compensation for transcripts will be up to a maximum of \$3.00 per page. Compensation for paralegal services will be up to a maximum of \$35.00 per hour. Compensation for Penalty Phase Coordinators on death penalty cases will be paid up to a maximum of \$40.00 per hour. (See, Criminal Rules, Rule 1451.)

M.D.'s and Ph.D.'s or equivalent will be compensated up to a maximum of \$95.00 per hour unless otherwise covered under the Court's Professional Services Fee Schedule or Rule 1460.7.

Expert mileage will be paid at the current Court-approved rate in effect for dates of service.

(Former Criminal Rule 1460.4, eff. July 1, 1998. Renumbered as Rule Criminal Rules 1460.3 and amended, eff. July 1, 2000. ~~As amended, eff. January 1, 2001. Amended eff. July 1, 2001.)~~ ~~Amended eff. January 1, 2003.~~ Amended, January 1, 2002, July 1, 2001, January 1, 2003. As amended, eff. January 1, 2004.

Rule 1460.4 Medical Commission Service Experts

All claims for Medical Commission Service experts shall be submitted in a timely manner. Claims shall be submitted on Court forms to the Court where the case is heard within 60 days of completion of the case. For the purposes of the Rule, completion of the case is defined as conclusion of the Pronouncement of Judgment in criminal matters. Billing should be for all services provided to that point. A Psychiatric Letter of Appointment or file stamped copy of the Court order of appointment must accompany all claims for Medical Commission Services. All claims for Medical Commission Services shall be submitted to the courthouse where the case was heard. Courthouse staff shall verify that an appropriate Psychiatric Letter of Appointment or Court order is attached to the claim, and shall verify any in-Court time listed on the claim.

Billings for EC § 1017 defense-requested confidential exam and reports must be signed off by defense counsel in the space provided prior to submittal to the Court for payment, except for in propria persona (pro per) cases, which must be approved by the Court Verifying Official at the court where the case was heard. (Eff. July 1, 2000.)

Rule 1460.5 Medical Experts Fee Schedules

Penal Code 1026 and 1368 exams and reports.....	\$300.00
<u>Penal Code 288.1 sex offender exam and report (Court funds, unless Court declined to order report)</u>	<u>\$250.00</u>
Defense requested Evidence Code 1017 exam and report (County funds).....	\$350.00
<u>Penal Code 1026 exam and report (NGI plea – Court funds) or 1026.5 (NGI extended commitment – Court funds) exam and report).....</u>	<u>\$300.00</u>
<u>Penal Code 1368 (competence – Court funds), 1369/1370.1 (development disability – Court funds) exam and report</u>	<u>\$300.00 total,</u>
<u>Unless court order of appointment specifically authorizes separate billing for two reports W&I 3050/3051</u>	
<u>Narcotic evaluation and report (Court funds, unless Court declined to order report)..</u>	<u>\$250.00</u>
Sex offender exam and report.....	\$250.00

Court appearances related to above exams and reports (payable by Court if Court paid for evaluation):

Full day.....	\$600.00
Half day.....	\$350.00
Mileage.....	Current court <u>Court</u> -approved rate in effect for dates of service

(Former Appendix III, Rule 1460, eff. July 1, 1998. Renumbered as Criminal Rule 1460.5, and amended, eff. July 1, 2000.) As amended, eff. January 1, 2004.

Rule 1460.6 Prior Approval

Prior express written approval of the Court is required for all investigator and expert services. Costs of services performed prior to the order of the Court, and costs beyond that provided for in the Court Order, will be denied. The Court's Professional Services Fee Schedule rates are the maximum allowed for experts unless an extraordinary billing rate receives specific prior express written approval by the Court. Copies of the Court's Fee Schedule may be obtained from the Court Executive Office. (Former Rule 1460.2, eff. July 1, 1998. Renumbered as Rule 1460.6 and amended, eff. July 1, 2000. Amended, eff. July 1, 2001.)

Rule 1460.7 Extraordinary Expert Fees

Upon prior approval of the Court after written request, in cases where, because of complexities, the seriousness of the charge, or novel medical examinations, extensive research and/or trial preparation are required, additional expert fees may be allowed for work performed by doctors of medicine or doctors of philosophy at the rate of up to \$95.00 per hour. If Board-certified in specialty related to the case, fees of up to \$125.00 per hour, \$450.00 for half day of testimony and \$800.00 for full day of testimony may be authorized. Requests for extraordinary expert billing rates which exceed the maximum rate specified in this Rule must be made by written motion with a detailed supporting declaration specifying the unique nature of the expert's service and why an extraordinary billing rate is justified, and receives prior approval of the Court. It is the duty of counsel to endeavor to negotiate the lowest hourly rate the expert will work for recognizing that the expert's services are a charge to the government. If extraordinary fees are authorized, billings must provide sufficient specificity with regard to services performed to support the bill for payment, with dates and times of service itemized. (Former Rule 1460.3, eff. July 1, 1998. Renumbered as Rule 1460.7, eff. July 1, 2000. Amended, eff. July 1, 2001. Amended eff. January 1, 2002.) As amended eff. January 1, 2003.

RULE 1460.8 INVESTIGATORS AND EXPERTS FEES IN CAPITAL CASES

The Superior Court of California, County of San Bernardino shall have two (2) Judges monitor and authorize fees for the investigators and experts in capital cases per P. C. 987.9. They shall be appointed by the Presiding Judge to serve as he/she desires. Investigator and Expert claims on capital cases are to be submitted to the defense counsel and per the instructions in the Superior Court's Procedures for Administration of 987.9 Penal Code Applications. (Former Rule 1324, eff. July 1, 1998. Renumbered as Rule 1460.8, and amended, eff. July 1, 2000.)

RULE 1460.9 – SUBPOENAED EXPERT TESTIMONY

Expert testimony and expenses related to testimony are the responsibility of the subpoenaing party, (District Attorney, Public Defender, private attorney) unless the party receives specific written approval of the Court that the cost will be borne by the Court or County, as appropriate, or when the testimony is related to an exam and report prepared pursuant to Medical Commission Service. (Eff. January 1, 2003.) Amended, eff. January 1, 2004.

RULE 1461 REVIEW COMMITTEE

When complaints are received by the Court Executive Office regarding attorney's fees, which have been awarded to private counsel in criminal cases, the file, together with all necessary documents, will be forwarded to the Supervising Judge of the affected district. If subsequent appeal becomes necessary, the file will be forwarded to chairman of a committee composed of three judges who act as an appeal board to review and make recommendation concerning such fees. The committee, after reviewing the entire matter, and if it deems it necessary, hearing from the attorney involved, will make its recommendation or recommendations to the Judge who made the original award. That Judge will then endorse, upon the recommendations, a new order changing or confirming the original award. (Former Rule 1132, eff. April 1, 1985. Renumbered as Rule 1461, eff. July 1, 1998, amended eff July 1, 2000.)

RULE 1462 APPOINTED COUNSEL

In each case in which a person has been furnished services of an appointed counsel, upon appointment of counsel the person must be asked to pay a Registration Fee of a maximum of \$25.00 per Penal Code, section 987.5. Upon conclusion of the proceedings in criminal matters, the Court shall make a determination of the actual costs of providing such services per Penal Code §987.8. Counsel shall be prepared at that time to submit itemized information as to the time they have devoted to the case. (Former Criminal Rule 1133, eff. April 1, 1985. Renumbered as Criminal Rule 1462, eff. July 1, 1998. ~~As amended,~~ Amended eff. July 1, 2000. As amended, eff. January 1, 2004.)

RULE 1464 REIMBURSEMENT ORDER

In the event any person may be required by law to reimburse the County for compensation of private counsel or costs of public defender services, the Court, after determining the amount thereof, shall make a determination of the present ability of such person to pay all or a portion of such amount and shall make such reasonable order for payment as is authorized by law. This determination and the determinations required by Rules 1460 and 1462 above shall be made only after the Court has held a hearing. All persons required by law to reimburse the County for compensation of private counsel or costs of public defender services shall be entitled to reasonable notice of the hearing and may appear thereat, with counsel, and participate therein, including the presentation of evidence and the cross-examination of witnesses. (Former Rule 1140, eff. May 27, 1982. Renumbered as Rule 1470 and amended, eff. July 1, 1998. Former Rule 1470. Renumbered as Rule 1464 and amended, eff. July 1, 2000.)

RULE 1480 COLLECTION

The Court, in its discretion, may delegate to County Central Collections the authority to collect such reimbursement and to establish and modify arrangements for installment payments.

In addition, to the extent authorized by law (e.g., Welfare and Institutions Code Section 905), it may delegate to the probation officer authority to reduce or cancel unpaid repayment obligations upon a finding by the probation officer that the person obligated no longer has the ability to pay the amount ordered. (Former Rule 1150, eff. May 27, 1982. Renumbered as Rule 1480, eff. July 1, 1998. Amended eff July 1, 2000)

RULE 1490

Rules 1430-1480 are not intended to apply to procedures under Section 372 of the Code of Civil Procedure and Section 1431 of the Probate Code. (Former Rule 1160, eff. May 27, 1982. Renumbered as Rule 1490, eff. July 1, 1998.)

CHAPTER 15
FAMILY LAW RULES

RULE 1510 CHANGE OF MEDIATOR OR EVALUATOR

Requests for change of mediator or evaluator shall be addressed to the Director of Family Court Services. If the request for change is not satisfactorily resolved, it may be brought to the attention of the Presiding Judge of the Family Law Division of the District in which the case is being heard.

Mediators: The request for a change of mediator shall be made prior to the beginning of the mediation session. The request will be granted only upon a substantial showing that the mediator is prejudiced against one of the parties or counsel; or is unable to perform his or her duties in a fair and impartial manner.

Evaluators: The request for a change of evaluator shall be made within five (5) days of the attorney/or party in propria persona receiving written notification of the evaluator assigned to the case. Changes will not be granted absent a substantial showing that the evaluator is prejudiced against one of the parties or counsel or is otherwise unable to render a fair and impartial evaluation.

Evaluators may petition the court to withdraw from a case, for good cause. The petition shall be made in writing, directed to the judicial officer to whom the case has been assigned, with copies to counsel or parties. A hearing shall be scheduled, if requested by counsel or parties or as deemed necessary by the judicial officer. The evaluator need not be present at the hearing unless directed by the court. No peremptory challenges of an evaluator are allowed.

Complaints: Complaints about services of mediators and evaluators shall be addressed to the Director of Family Court Services. If the complaint is not satisfactorily resolved, it may be addressed to the Presiding Judge of the Family Law Division. (Eff. July 1, 1998 as amended January 1, 1999. As amended, eff. July 1, 2003.)

RULE 1511 MEDIATION

Rule 1511.1 Mediation Procedures

The parties' attorneys do not participate in Family Court Services mediation. If the parties reach an agreement during mediation, it will be memorialized in writing and submitted to them or their attorneys before the OSC hearing. If the parties and their attorneys approve of the parties' agreement, they will submit the agreement to the court for the court's approval and adoption as an order.

If the parties are unable to resolve issues of custody or visitation by mediation, the Family Court Services mediator will submit a written recommendation and reasons for the recommendation to the parties and/or parties attorneys and the court. The court will consider the recommendation at the time of the OSC hearing. At the hearing, the mediator may be called as a witness by either party, subject to cross examination by the other party. (As amended eff. January 1, 2003. Former Family Law Rule 1510.1, eff July 1, 1998, amended, eff. July 1, 1999, amended eff. January 1, 2003. Renumbered as Family Law Rule 1511.1, eff July 1, 2003)

Rule 1511.2 Ex Parte Communication

If both parties are represented by attorneys and the attorneys want to confer with the mediator prior to the mediation conference, they may schedule a meeting at a time that is agreeable to the mediator. The mediator will not meet with one attorney unless the opposing attorney is present in person or by telephone. If one attorney refuses or is unwilling to meet with the mediator, the other attorney may meet with the mediator only by court order.

The mediator may have ex parte contact with either attorney or party at any time during the mediation and/or while preparing the recommendation for the limited purpose of obtaining necessary information. Neither party nor attorney may contact the mediator, except upon request of the mediator, unless the other party or attorney is present in person or by phone. (Former Family Law Rule 1510.2, eff. January 1, 2003. Renumbered as Family Law Rule 1511.2, eff. July 1, 2003.)

RULE 1512 EVALUATION PROCESS

Rule 1512.1 Qualifications and requirements

All evaluators shall meet the minimum qualifications, training, continuing education and experience requirements pursuant to the California Rules of Court, Rule 5.220(g), and adhere to all other requirements of Rule 5.220. (Eff. July 1, 2003.)

Rule 1512.2 Ex parte communication

If both parties are represented by attorneys and the attorneys want to confer with the evaluator, they may schedule a meeting at a time that is agreeable to the mediator. The evaluator will not meet with one attorney unless the opposing attorney is present in person or by telephone. If one attorney refuses or is unwilling to meet with the evaluator, the other attorney may meet with the evaluator only by court order.

The evaluator may have ex parte contact with either attorney or party at any time during the evaluation process for the limited purpose of obtaining necessary information. If during the course of the evaluation, a party by oral communication raises issues or allegations which can influence the evaluation, the evaluator shall give the other party an opportunity to respond before completing the evaluation report. (Eff. July 1, 2003.)

Rule 1512.3 Payment

The Court will order payment of the evaluation at the time of the appointment. The evaluator may not withhold a report because of the parties' failure to pay. The evaluator may bring the issue of a parties' failure to pay to the Court. (Eff. July 1, 2003.)

Rule 1512.4 Compliance with Rules of Court

All evaluations shall include those requirements set forth in California Rules of Court, Rule 5.220(e). (Eff. July 1, 2003.)

RULE 1513 GUIDELINES FOR APPOINTMENT OF COUNSEL FOR MINORS

1513(a) Request for appointment of counsel

In any family law or other proceeding where two or more persons are disputing the division of time with (physical custody) or responsibility for (legal custody) of a minor child or the court determines that the appointment is justified by the facts of the specific case, the court should consider the appointment of an attorney to represent the best interests of the child if requested to do so by either party, the attorney for either party, a mediator performing the duties under Family Code section 3170 et seq., a professional person making a custody recommendation under Family Code sections 3110 et seq., a court appointed guardian ad litem or special advocate, the child, or any relative of the child; or the court may appoint counsel on its own motion.

1513(b) Guidelines for appointment

In considering the appointment of counsel for the child, the court should take into account the following factors:

- (1) whether the dispute over custody is intense or protracted or the parties are so embroiled in the dispute that the needs of the child are being neglected;
- (2) whether the child is subjected to stress on account of the dispute that might be alleviated by the intervention of counsel representing the child;
- (3) whether an attorney representing the child would be likely to provide the court with significant information not otherwise readily available or likely to be presented;
- (4) whether the dispute involves allegations that a parent, a stepparent or other person with the parent's knowledge has physically, mentally or sexually abused the child;
- (5) whether it appears that neither parent is capable of providing a stable and secure environment for the child;
- (6) whether the child is capable of verbally expressing his or her views;
- (7) whether attorneys are available for appointment who are sensitive to the needs of children and the issues raised in representing them;
- (8) whether the parties disagree regarding the medical treatment for the child and the child's health is at risk;
- (9) whether there is an issue whether to waive a privilege on behalf of the child; and
- (10) whether the best interests of the child appear to require special representation.

1513(c) Contents of order for appointment of counsel

If counsel is appointed to represent a child pursuant to subdivision (b), the order for appointment of counsel may specify the following:

- (1) the issues regarding which the child's representation is ordered;
- (2) any tasks expected to be performed by the child's counsel to benefit the child;
- (3) the duration of the appointment which may be extended upon a showing of good cause; and
- (4) the source of funds and manner of reimbursement for costs and attorney fees.

1513(d) Two or more children

If there are two or more children, the court should consider whether there may be a conflict between the children such that one attorney can adequately represent them all.

(Eff., July 1, 2003.)

RULE 1514 GUIDELINES FOR DETERMINING PAYMENT OF APPOINTED COUNSEL FOR MINORS

1514(a) General guidelines

Whenever counsel is appointed to represent children under Family Code, section 3150, the Court should determine the ability of the parties to pay all or a portion of the costs of counsel appointed.

1514(b) Determination of ability to pay

If a party is currently eligible for a fee waiver under Government Code, section 68511.3 (in forma pauperis), the party should be deemed unable to pay any part of the costs of the appointed counsel.

In all other cases, the Court should determine ability to pay based on the party's income and assets reasonably available. The Court may require the party to file and serve a current income and expense statement unless the party has already filed one in the proceeding that represents the party's financial status at the time of the determination.

The court may make the determination of the ability to pay at the time of appointment of counsel, or thereafter at the request of appointed counsel but not later than 30 days after appointed counsel is relieved as attorney of record.

Rule 1514(c) Payment of appointed counsel

If the court finds the parties are unable to pay all or a portion of the costs of appointed counsel pursuant to Family Code, section 3153, it shall order the county to pay the portion the parties are unable to pay. The order may provide for progress or installment payments. (Eff., July 1, 2003.)

RULE 1515 EX PARTE PROCEDURE

Rule 1515.1 Ex Parte Notice

For all ex parte applications, except Domestic Violence matters and discovery proceedings, the party seeking an ex parte order shall notify opposing counsel or a party, if not represented, no later than 12:00 P.M. on the court day immediately preceding the day of the ex parte appearance. For Domestic Violence matters, four-hour notice shall be given to opposing counsel or a party, if not represented, unless the court approves a waiver of notice on good cause, which cause is set forth by clearly articulated facts in a supporting declaration. Notice of ex parte discovery shall be given to opposing counsel or to a party, if not represented, not later than the time provided for in California Rules of Court, Rule 379. (Former Family Law Rule 1511.1, eff. July 1, 2000. Renumbered as Family Law Rule 1515.1, eff. July 1, 2003.)

RULE 1516 FAMILY LAW COURT COMMUNICATION PROTOCOL

In hearing any case involving any issue of domestic violence, child custody or visitation, the judicial officer shall make a reasonable inquiry about the existence of any criminal court protective orders involving the parties to the action currently before the Court. (Eff., July 1, 2003.)

CHAPTER 16
JUVENILE RULES

RULE 1610 SANCTIONS

Any attorney who fails to comply with the local rules of Court may be subject to sanctions, including monetary sanctions, and, at the discretion of the Judge of the Juvenile Court, may be reported to the State Bar and/or removed from the appointment list. (Former Rule 2510, eff. Jan. 1, 1997. Renumbered as Rule 1610, eff. July 1, 1998.)

RULE 1620 TIME FOR FILING REPORTS IN JUVENILE PROCEEDINGS

Unless otherwise ordered or specifically provided by law, all reports prepared by the San Bernardino County Department of Public Social Services for a hearing in a juvenile dependency matter shall be filed with the Court no later than 10 calendar days prior to the hearing.

Unless otherwise ordered or specifically provided by law, all reports prepared by the San Bernardino County Probation Department for a hearing in a juvenile delinquency matter shall be filed with the Court no later than 48 hours prior to the hearing. (Former Rule 2520, eff. Jan. 1, 1997. Renumbered as Rule 1620, eff. July 1, 1998.)

RULE 1630 CALENDAR CALL

All attorneys shall be present for calendar call unless expressly excused by the Court. Failure to appear at calendar call, or to be expressly excused, may subject the attorney to sanctions. (Former Rule 2530, eff. Jan. 1, 1997. Renumbered as Rule 1630, eff. July 1, 1998.)

RULE 1640 CONTINUANCES

Dates calendared for juvenile proceedings shall be regarded by counsel as definite Court appointments. Counsel appearing in other Courts on the same date for which a juvenile case is set shall advise the other Courts of the precedence of juvenile matters over other matters so that the juvenile matter may proceed as scheduled. (Eff. July 1, 1998)

Rule 1640.1 Written motion for continuance

A motion for continuance shall be in writing and shall be accompanied by a supporting affidavit or declaration. The moving party shall file and serve notice of the motion and all supporting documents upon each party at least 2 Court days prior to the hearing date. The supporting affidavit or declaration shall detail specific facts showing that good cause exists to grant a continuance. (See Welfare & Institution Code, §§ 352, 682; Cal. Rules of Court, rules 1362, 1412, 1422, 1447.) (Eff. July 1, 1998)

Rule 1640.2 Oral motion for continuance

An oral motion for a continuance shall be entertained where the moving party shows good cause for failing to file a properly noticed written motion.

If good cause for failing to file a properly noticed written motion is not found, a continuance shall only be granted if the best interests of the minor would be furthered by the continuance. Upon granting the continuance under these circumstances, the Court may order the attorney requesting the continuance to pay the costs of the other parties, including attorneys fees, witness fees, and costs. (Former Rule 2540, eff. Jan. 1, 1997. Renumbered as Rule 1640, eff. July 1, 1998.)

RULE 1650 MOTIONS

All motions shall be in writing and shall designate with specificity the issues to be litigated and decided by the Court. A motion shall be comprised of a notice of motion, a declaration in support of the motion, and a memorandum of points and authorities in support of the motion. The notice of motion and all supporting papers shall be served upon each party in the manner best calculated to provide sufficient time for each party to respond. The date for the motion to be heard shall be cleared with the Court clerk prior to filing and serving the motion. The Court clerk shall not accept a motion for filing if it is not accompanied by a proof of service. (Eff. July 1, 1998)

Rule 1650.1 Notice

Where an order shortening time is not necessary under Rule 1660, the notice of motion and supporting papers shall be served and filed at least fifteen (15) calendar days before the time appointed for the hearing. However, if service is effected by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the required fifteen (15) day period for notice shall be increased by two (2) Court days. If service is effected by mail, the period for notice shall be increased by five (5) calendar days. (Eff. July 1, 1998)

Rule 1650.2 Response

All papers opposing a noticed motion shall be filed with the Court and served on each party at least five Court days prior to the hearing, with the period for notice increased, as described in Rule 1650.1, supra, if personal service is not employed. (Eff. July 1, 1998)

Rule 1650.3 Reply

Any reply papers in support of the motion shall be filed with the Court and served on each party at least two Court days prior to the hearing, with the period for notice increased, as described in Rule 1650.1, supra, if personal service is not employed. (Eff. July 1, 1998)

Rule 1650.4 Motion under § 700.1

The notice of motion designating a motion pursuant to Welfare and Institutions Code section 700.1 shall:

- (a) describe with specificity the item, statement, or other evidence sought to be suppressed;
- (b) state with specificity the theory of law and factual basis underlying the theory which support the motion;
- (c) cite the specific legal authority which supports the motion; and
- (d) indicate whether sworn testimony is to be relied upon at the hearing.

Failure to specify the evidence to be suppressed, theory of law, factual basis, or legal authority in support of such motion shall be considered a failure to raise a contested issue and shall preclude litigation of such issue unless and until properly placed in issue by compliance with this rule. (Eff. July 1, 1998)

RULE 1660 ORDER SHORTENING TIME

The Court may prescribe a shorter time for the service and filing of a notice of motion and supporting papers only if the party seeking to shorten the time files an Application for Ex Parte Order Shortening Time with the Court. A party filing an Application for Ex Parte Order Shortening Time must give at least four (4) hours notice of the nature of the application to each party, together with the proposed time and place of the hearing. Notice may be given by telephone. The Application shall be accompanied by an affidavit or declaration setting forth facts showing good cause for the order and any attempts made to notify each party of the ex parte hearing. The Application shall also be accompanied by a proposed order, as well as by the notice of motion and supporting papers. (Eff. July 1, 1998)

RULE 1670 PRETRIAL SETTLEMENT CONFERENCES IN DEPENDENCY MATTERS

Before any attorney (or party in pro per) may set a dependency hearing for contest, a Pretrial Settlement Conference shall be calendared for the purpose of attempting to resolve or narrow the disputed issues. Counsel shall agree to a date and a time for the Pretrial Settlement Conference which does not conflict with any other scheduled appointments or calendared Court appearances. Counsel and all parties shall be ordered to appear at the date and the time set for the conference; provided, however, that an attorney may waive his or her client's presence if the attorney has been given sufficient authority to act on the client's behalf at the conference.

At the appointed date and time, counsel shall meet and confer outside the Courtroom. Counsel shall advise their clients of any proposed settlement and shall not return to the Courtroom until either a written settlement agreement has been negotiated or at-issue memoranda for a contested hearing have been drafted. The written settlement agreement or the at-issue memoranda shall be submitted to the Court immediately after the conclusion of the negotiations. (Former Rule 2570, renumbered as Rule 1670, eff. July 1, 1998.)

Rule 1670.1 Pretrial At-Issue Memorandum

If a settlement cannot be reached at the Pretrial Settlement Conference, the attorney intending to set a contested hearing must complete a Pretrial At-Issue Memorandum. All other attorneys must complete a Counter Pretrial At-Issue Memorandum. A Pretrial At-Issue Memorandum and a Counter Pretrial At-Issue Memorandum shall contain the following information:

- (a) the nature of the hearing being set for contest;
- (b) the specific facts which are disputed;
- (c) the specific material facts which are not disputed;
- (d) the specific points of law which are disputed;
- (e) the specific nature of the relief sought;
- (f) a list of all witnesses likely to be called at trial;
- (g) a brief statement describing the substance of the testimony each listed witness is expected to provide;
- (h) a list of exhibits expected to be offered at trial, with a description of the relevance of each exhibit;
- (i) any factual and/or legal issue to which all parties will stipulate;
- (j) a statement of whether discovery has been completed;

- (k) if discovery has not been completed, a list of the items sought and the reason each item has not yet been obtained; and
- (l) a time estimate for the contested hearing. (Eff. July 1, 1998)

Rule 1670.2 Court Procedure

Each Courtroom shall schedule and adhere to a specified time when it will briefly recess its regular calendar in order to handle matters which have been scheduled for Pretrial Settlement Conferences that day. During the recess, the judicial officer shall review any written settlement agreement reached as a result of a Pretrial Settlement Conference and shall make appropriate findings and orders. Where a Pretrial Settlement Conference has not resolved matters, the judicial officer shall review the Pretrial At-Issue Memorandum and all Counter Pretrial At-Issue Memoranda submitted. The Court shall prepare an Order re Pretrial At-Issue Memorandum and shall then set the case for a contested hearing. (Eff. July 1, 1998)

Rule 1670.3 Order re: Pretrial At-Issue Memorandum

The Order re Pretrial At-Issue Memorandum shall identify the following:

- (a) any facts admitted and which will require no proof at trial;
- (b) the issues of fact which will be litigated at trial;
- (c) the issues of law which will be litigated at trial;
- (d) any witness or exhibit the Court has deleted from the witness and exhibit lists provided by the parties;
- (e) all declarations which have been lodged with the Court clerk upon stipulation of the parties;
- (f) the time estimate for the trial; and
- (g) the date the matter is set for trial. (Eff. July 1, 1998)

Rule 1670.4 Modification of Order re: Pretrial At-Issue Memorandum

Any change to the Order re Pretrial At-Issue Memorandum shall be accomplished only if the party seeking the change files and serves an Amended Pretrial At-Issue Memorandum or an Amended Counter Pretrial At-Issue Memorandum no later than five Court days before the date set for trial. If necessary, any opposing party may respond by filing and serving its own amended memorandum no later than one Court day before the date set for trial. The Court shall review the amended memoranda prior to the commencement of the contested hearing and shall modify its Order re Pretrial At-Issue Memorandum only to prevent manifest injustice. (Eff. July 1, 1998)

Rule 1670.5 Continuances

No continuance of the Pretrial Settlement Conference shall be granted based on the failure of a party to appear. (Eff. July 1, 1998)

Rule 1670.6 Requirement of jurisdictional/dispositional report

When a Pretrial Settlement Conference is calendared at a detention or arraignment hearing, the Court shall order the Department of Public Social Services to prepare a jurisdictional/dispositional report for use by counsel and parties at the Pretrial Settlement Conference. The report shall be submitted to the Courtroom where the case is pending no later than one Court day prior to the Pretrial Settlement Conference. The Department of Public Social Services may submit only a jurisdictional report if leave of Court is obtained prior to the Pretrial Settlement Conference. (Eff. July 1, 1998)

Rule 1670.7 Pretrial Settlement Conference prior to contested § 366.26 hearing

Return of the minor to parental custody is not an issue at a section 366.26 hearing. At a Pretrial Settlement Conference scheduled in anticipation of a contested section 366.26 hearing, counsel should confer only to discuss issues relevant to that hearing. (Eff. July 1, 1998)

RULE 1680 PRETRIAL DISCOVERY IN PROCEEDINGS UNDER SECTION 600 ET SEQ

Pretrial discovery shall be reciprocal and shall be conducted on an informal basis. Except as protected by privilege, all relevant material shall be disclosed in a timely fashion to all parties to the litigation. (Eff. July 1, 1998)

Rule 1680.1 Disclosure of information under Penal Code section 1054 et seq.

Upon the filing of a petition pursuant to Welfare and Institutions Code section 602, petitioner shall disclose to minor's counsel all information described in Penal Code section 1054 et seq. Likewise, no later than three Court days prior to the jurisdictional hearing, minor's counsel shall disclose to petitioner all information described in Penal Code section 1054 et seq. (Former Rule 2580, eff. Jan. 1, 1997. Renumbered as Rule 1680, eff. July 1, 1998.)

RULE 1689 JUVENILE COURT COMMUNICATION PROTOCOL

In hearing any case involving any issue of domestic violence, child custody or visitation, the judicial officer shall make a reasonable inquiry about the existence of any criminal court protective orders and/or other orders regarding child custody or visitation involving the parties to the action currently before the Court. (Eff., July 1, 2003.)

RULE 1690 RELEASE OF INFORMATION RELATING TO JUVENILES

All requests for release of information relating to juveniles shall describe with specificity the materials sought and shall describe with specificity the purpose for which such material is to be used. Failure to comply with this rule shall result in the request being denied. (See Welfare & Institution Code, § 827; Cal. Rules of Court, rule 1423; Judicial Council form JV-570.) (Eff. July 1, 1998)

Rule 1690.1 Objection to request for release of information

Any objection to a request for release of information shall be filed with the Court and served on both the petitioning party and all persons specified in California Rules of Court, rule 1423(d). The objection shall be filed and served no later than ten (10) calendar days after the date the Court clerk gives notice of the request. The objection shall set forth with specificity the grounds for opposing the request and the legal authority upon which the objection is made. (Eff. July 1, 1998)

Rule 1690.2 Review by Court

Within five (5) Court days after the time for filing objections has elapsed, the Court shall review the request and any objections and shall summarily deny the request, summarily grant the request, or set a hearing on the request. (Former Rule 2590, eff. Jan. 1, 1997. Renumbered as Rule 1690, eff. July 1, 1998.) (Eff. July 1, 1998)

RULE 1691 CLIENT COMPLAINTS IN DEPENDENCY MATTERS

Complaints by a party regarding the representation she or he receives in a dependency matter shall initially be referred to the agency, law firm, or attorney appointed to represent the party. If the issue remains unresolved, the party may submit the complaint to the Court in writing. The Court shall then review the complaint and take appropriate action where required. (Former Rule 2591, eff. Jan. 1, 1997. Renumbered as Rule 1691, eff. July 1, 1998.)

RULE 1692 COMPETENCY OF ATTORNEYS REPRESENTING PARTIES IN JUVENILE DEPENDENCY AND DELINQUENCY MATTERS

Effective July 1, 1996, only attorneys who meet the minimum standards of competency set forth in Rules 1692.4 through 1692.6, infra, shall represent parties in juvenile matters. Attorneys who believe they meet these minimum standards shall submit to the juvenile Court a Certification of Competency. This rule shall not apply to privately retained counsel.

Attorneys who meet the minimum standards of competency as demonstrated by the information contained in the Certification of Competency shall be deemed competent to represent parties in juvenile matters; provided, however, that the juvenile Court may determine an attorney is not competent based on the performance of the attorney in a juvenile case within the six-month period prior to the attorney's submission of the certification. In the event the juvenile Court determines an attorney is not competent, the Court shall give notice of its decision to the attorney and provide the attorney an opportunity for hearing on that issue. (Eff. July 1, 1998)

Rule 1692.1 Time for submitting initial Certification of Competency with the Court

If an attorney has a matter pending before the juvenile Court on the effective date of this rule, the attorney shall complete and submit to the Court an initial Certification of Competency on or before July 31, 1996.

Any attorney appearing in a juvenile matter for the first time after the effective date of this rule shall complete and submit an initial Certification of Competency to the Court within ten (10) days after his or her first appearance in a juvenile matter. (Eff. July 1, 1998)

Rule 1692.2 Attorneys not meeting the minimum standards on the effective date of this rule

Any attorney who appears before the Court in a juvenile case pending on the effective date of this rule and who does not meet the minimum standards of competency shall notify the Court. The attorney shall then have until October 31, 1996 to complete and submit a Certification of Competency demonstrating that the attorney meets the minimum standards. The Court shall order that certified counsel be substituted for any attorney who fails to comply with this rule. (Eff. July 1, 1998)

Rule 1692.3 Attorneys certified in other counties

If an attorney maintains his or her principal office outside of this County, proof of certification by the Juvenile Court of the California County in which the attorney maintains an office shall be sufficient evidence of the attorney's competency to represent parties in this County. (Eff. July 1, 1998)

Rule 1692.4 Minimum standards of competency

Any attorney representing parties in juvenile matters shall not seek certification of competency and shall not be certified by the Court as competent until the attorney has met minimum standards of competency. An attorney meets the minimum standards where the attorney has either:

- (a) Represented parties for at least six months in juvenile matters; or
- (b) Participated in at least eight hours of training or education in juvenile law. The training or education must have addressed Juvenile case law and statutes, the Rules of Court, Judicial Council forms, motions, trial techniques and skills, and writs and appeals. If the attorney seeks certification to represent parties in juvenile dependency matters, the training or education must also have addressed child development, child abuse and neglect, family reunification and preservation, and reasonable efforts. (Eff. July 1, 1998)

Rule 1692.5 Recertification every three years

In order to retain his or her certification, each attorney who has been certified previously by the Court shall submit a renewal Certification of Competency to the Court on or before January 31st of the third year after the year in which the attorney was first certified and then every third year thereafter. The attorney shall attach to the renewal Certification of Competency evidence that the attorney has completed at least eight hours of continuing training or education directly related to juvenile proceedings since the attorney was last certified. Evidence of completion of the required number of hours of training or education may include a copy of a certificate of attendance issued by a California MCLE provider; a certificate of attendance issued by a professional organization which provides training and/or education for its members, whether or not it is a MCLE provider; a copy of the training or education program schedule together with evidence of attendance at such program; or such other documentation as may reasonably be considered to demonstrate the attorney's attendance at such program. (Eff. July 1, 1998)

Rule 1692.6 Training and/or education required for recertification

For attorneys seeking recertification to represent parties in juvenile dependency cases, the training or education required by Rule 1692.5 must be in areas specified in Rule 1692.4 or in other areas related to juvenile dependency practice, such as special education, mental health, health care, immigration, the rules of evidence, adoption and parentage, the Uniform Child Custody Jurisdiction Act, the Parental Kidnapping Prevention Act, state and federal public assistance programs, the Indian Child Welfare Act, client interviewing and counseling techniques, case investigation and settlement negotiations, mediation, basic motion practice, and the rules of civil procedure.

For attorneys seeking recertification to represent parties in juvenile delinquency cases, the training or education required by Rule 1692.5 must be in areas specified in Rule 1692.4 or in other areas related to juvenile delinquency practice, such as criminal law, client interviewing and counseling techniques, case investigation and settlement negotiations, basic motion practice, or the rules of evidence. (Eff. July 1, 1998)

Rule 1692.7 Decertification

In the event a certified attorney fails to submit a renewal Certification of Competency to the Court in the time or manner required by Rule 1692.5, the Court shall notify the attorney that she or he shall be decertified. The attorney shall have 20 days from the date of the mailing of the notice to submit a renewal Certification of Competency in compliance with the rule. If the attorney fails to submit the certification or if the attorney submits a non-complying certification, the Court shall order that certified counsel be substituted for that attorney. (Eff. July 1, 1998)

Rule 1692.8 Maximum Caseload

The attorney for a child must limit his caseload to the number of cases that allows him to competently perform the duties required by Welfare & Institutions Code section 317(e) and otherwise provide adequate representation for the child. (Eff. July 1, 2002.)

RULE 1693 CHILD ADVOCACY PROGRAM: COURT APPOINTED SPECIAL ADVOCATE/GUARDIAN AD LITEM

The San Bernardino Child Advocacy Program (SBCAPI) is the sole local agency, which has been approved and designated by the Presiding Judge of the San Bernardino County Superior and Juvenile Courts to serve as the Court Appointed Special Advocate/Guardian ad Litem (CASA/GAL) program. The SBCAPI agency is contracted by the San Bernardino County Superior Court to recruit, screen, select, train, supervise and support lay volunteers to be appointed by the Court to help define the best interests of children in juvenile Court dependency and delinquency proceedings, including guardianships, actions to terminate parental rights, and adoption. The program offers the opportunity to enhance the decision-making process in juvenile Court through the development of significant and appropriate community volunteer advocacy relationships with children. (See Welfare & Institution Code, §§ 100, 356.5, 358; Cal. Rules of Court, rule 1424.) (Eff. July 1, 1998)

Rule 1693.1 Duties of CASA/GAL volunteers

CASA/GAL volunteers serve as officers of the Court and are subject to all Court rules. Their duties and responsibilities are outlined in the policies and procedures approved by the SBCAPI Board of Directors and by the Superior Court contract agreement. The volunteers are under the direct guidance and supervision of the SBCAPI agency staff and are required to comply with the approved policies and procedures. (See Welfare & Institution Code, §§ 100-109; Cal. Rules of Court, rule 1424.) (Eff. July 1, 1998)

Rule 1693.2 Appeals/grievance procedure for CASA/GAL volunteers

All CASA/GAL volunteers are appointed by and serve at the pleasure of the Court. The appointment is a privilege and not a right.

The Presiding Juvenile Court Judge or his/her designee has the sole authority and power to appoint and/or remove a CASA/GAL volunteer to or from a case. There is no appeals process. Once a volunteer has been removed from a case, the volunteer shall not continue contact with any of the parties in the case. CASA/GAL volunteers who are removed/terminated from the program shall not be reappointed on any case. The SBCAPI Board of Directors shall establish an internal appeals/grievance process within the agency's policy and procedure. (Eff. July 1, 1998)

Rule 1693.3 Referral of case to CASA/GAL program; appointment of CASA/GAL volunteer

A child's juvenile Court case may be referred to the SBCAPI CASA/GAL program for evaluation and consideration for acceptance into the program. Upon acceptance of the case by the agency and acceptance by an available CASA/GAL volunteer, an application for appointment, along with a signed CASA/GAL consent to serve, shall be submitted to the Court by the SBCAPI Executive Director. The application shall request appointment of the identified CASA/GAL volunteer. Appointment may occur anytime at or after detention and shall follow the state-approved guidelines for early assignment.

Criteria for referral and appointment include, but are not limited to, the following:

- (a) the child is traumatized and has little or no support network of friends and extended family;
- (b) the child and the family have multiple or complex service needs and coordination of services is required;
- (c) the child has suffered severe physical, sexual or emotional abuse;
- (d) the child has special educational, developmental, medical, mental health or other needs, particularly if there are conflicting opinions as to the assessment of or treatment for the child;
- (e) the child's case involves numerous issues and interested parties;
- (f) the child has experienced multiple placements;
- (g) the child's parents have had multiple interventions and have consistently failed to show progress toward or interest in fulfilling treatment plans and goals for family reunification;
- (h) the child's family might be assisted by a CASA/GAL in the preservation of the family unit or the CASA/GAL might expedite family reunification or adoption;
- (i) a delinquent child falls within the program guidelines and the child's history and family dynamics do not represent a danger to the volunteer or the community;
- (j) the Presiding Juvenile Court Judge or a designee determines referral and appointment is advisable. (Eff. July 1, 1998)

Rule 1693.4 Child Advocacy Advisory Council

There shall be a Child Advocacy Advisory Council consisting of the Presiding Juvenile Court Judge, one dependency bench officer, one delinquency bench officer, the Juvenile Court Administrator, representatives from County Departments (Child Protective Services, Probation, Public Defender, Mental Health, County Schools), and other representatives as the Council deems appropriate.

The Advisory Council shall provide a channel for communication between the SBCAPI Executive Director/staff and the Presiding Juvenile Court Judge, other Judges and Referees in the Juvenile Court, and officials from other participating agencies.

The Advisory Council shall also define the relationships among operational participants, including, but not limited to, the Court, the child welfare agency, mental health professionals, attorneys and CASA/GAL volunteers and staff.

The Advisory Council shall meet at least quarterly with the SBCAPI Executive Director and shall make recommendations to the Executive Director and the Board of Directors on issues pertaining to the program's policies and services.

In addition, the Presiding Juvenile Court Judge shall meet with the Executive Director at least monthly, or more frequently as needed, to discuss any problems that have arisen. During these meetings, the Executive Director shall advise the Presiding Juvenile Court Judge of any other pertinent information. (Eff. July 1, 1998)

Rule 1693.5 Confidentiality of SBCAPI records

All SBCAPI records, including personnel, volunteer and juvenile Court case records, are confidential. Without prior Court order or except as otherwise provided by law, only the Executive Director, the Presiding Juvenile Court Judge, and her/his designee shall have access to the confidential records. The records shall not be copied or released to anyone who does not have a legal right to access these records.

Any person without a legal right to access these documents may seek access through a petition requesting their release. The petition shall be submitted to the Presiding Juvenile Court Judge. (See Welfare & Institution Code, § 827; Cal. Rules of Court, rule 1423; Judicial Council form JV-570; Rules 1690, 1690.1, 1690.2, *supra*.)

No one in the agency shall copy or remove any SBCAPI records without the prior approval and authority of the Executive Director. The Executive Director is the keeper of the SBCAPI records under the authority of the Board of Directors and the Presiding Juvenile Court Judge.

All SBCAPI records shall be kept for a minimum of five years and then appropriately destroyed. (See Welfare & Institution Code, § 826.) (Former Rule 2594, eff. Jan. 1, 1997. Renumbered as Rule 1693, eff. July 1, 1997.) (Eff. July 1, 1998)

CHAPTER 17
RESERVED

CHAPTER 18
ELECTRONIC FILINGS AND SERVICE

RULE 1800 ELECTRONIC FILING PILOT PROGRAM

The Superior Court of California, County of San Bernardino adopts an Electronic Filing Pilot Program and Policy in accordance with California Rules of Court, Rule 981.5 – Electronic Filing and Forms Generation, California Rules of Court, Rule 1033 - Court Technology Advisory Committee, California Standards of Judicial Administration Section 37 – Electronic Filing, California Standards of Judicial Administration Section 38 – Access to Electronic Records and the Report of the Court Technology Task Force adopted by the Judicial Council on January 25, 1996. There shall be no direct electronic transmission of any pleadings or papers to the Court except in accordance with this rule. (Eff. January 1, 2000.)

RULE 1810 DEFINITIONS

- a. “Electronic Filing System” (EFS), means the computer equipment and software receiving and processing documents transmitted to the Court electronically and the set of procedures by which a court accepts, reviews, and processes data and documents submitted by qualified electronic filers.
- b. “Qualified Electronic Filer” means a person who meets the Court’s criteria for use of its electronic filing system, which includes the technological means of identifying the filer and processing the electronically filed documents, and any required fees.
- c. “Electronic filing of documents” means the electronic transmission of data contained in a Judicial Council form or other document that is required in case processing to or from the Superior Court of California, County of San Bernardino case tracking database system via modem or fax which is originally displayed in digital or written format, readable upon receipt and thereafter converted to digital electronic signals, transformed by computer and stored by the San Bernardino County Court on magnetic tape, optical disk, or other medium.
- d. “Document” means any pleading, moving paper, declaration or other paper filed by a party.
- e. “Electronically Filed Document” means an electronically encoded or recorded document including a textual document, or a document in image form that would otherwise be filed with the Court as a paper document.
- f. “Document in Image Form” means an electronic document recorded as a matrix of dots forming a picture, rather than as a textual document.
- g. “Court Original Document” means the image retained by the Court, which shall be deemed the original, and any printed version thereof deemed a copy.
- h. “Electronic Generation of a Court Document” means the electronic generation by the Court of an order, notice, judgment, or other document.
- i. “Format” means the appearance that an electronically filed document would have if printed from its authoring application.
- j. “Lodged/lodging” means the receipt by the Court of a document electronically transmitted to the Court from a qualified electronic filer for review by the Clerk to determine if the document is acceptable for filing with the Court.

- k. "Record" includes the "Court Record" as defined by Gov. C. § 68151(a) and any information that constitutes Court action, or that otherwise reflects an official action of the Court. Records do not include personal notes or preliminary memoranda of judges or other judicial branch personnel.
- l. "Electronic Record" includes any record that is accessible electronically, regardless of how it was created. Electronic record does not include records on microfiche, paper, or any other medium that can be read without the use of an electronic or mechanical device.
- m. "Access" means the ability to obtain or make use of electronic records by any means.
- n. "Public Access" means access that is not restricted by law or an order of the Court.
- o. "Signer" refers to a 'person' who creates a signature for an electronically filed document by using their typewritten name.
- p. "Signature" shall consist of a typed version of the handwritten signature. Signatures on electronically filed documents shall be deemed original.
- q. "Standard Time". Any reference to time reflected in any statute, rule, regulation, or policy shall mean the United States standard time in which the jurisdiction of the Court is located. (Eff. January 1, 2000.)

RULE 1820 ELECTRONIC FILING PARTICIPATION

Filing documents electronically is an enhanced information service provided by arrangement with one or more private-sector firms under contract with the Court. Such a firm may require payment of a convenience fee and/or transaction fee and/or impose other reasonable requirements by contract with the qualified electronic filer as conditions for processing an electronically filed document.

Specific information regarding the service provider may be obtained from the Court Executive Office. (Eff. January 1, 2000.)

RULE 1830 FAX FILINGS (FACSIMILE TRANSFER TO COURT)

The Court may receive a facsimile transmission into a computer file, rather than receiving such a transfer onto paper. For purposes of these rules, however, such a document shall not be considered an electronically filed document, but rather, shall be governed by the rules governing Fax Filings. (Eff. January 1, 2000.)

RULE 1831 FEE EXEMPTION

Notwithstanding the provisions of Rule 1830, neither the state nor any county, city, district or other political subdivision, nor any public officer or body, acting in his official capacity or on behalf of the state or any county, city, district or other political subdivision, shall pay or deposit any convenience fee and/or transaction fee for processing an electronically filed document. (Eff. January 1, 2000.)

RULE 1840 ELECTRONIC FILING PROCESS

Electronically transmitted documents must be received, lodged and accepted for filing by EFS in order to be considered duly filed with the Court. (Eff. January 1, 2000.)

Rule 1840(a) Date/Time of Filing

A document may be electronically transmitted to the Court at any time of the day. Acceptance of the document for filing with the Court shall be determined by the Clerk, and shall be deemed to occur (i) on the date the document was lodged with the court if the lodging occurred during normal business hours of the clerk's office, and (ii) on the next business day the clerk's office is open for business if the lodging occurred after normal business hours of the clerk's office.

Notwithstanding the foregoing, the Court may authorize the Clerk to automatically accept for filing certain electronically transmitted documents specified on a list provided by the Court as of the date and time the document was lodged with the clerk's office regardless of whether the office of the clerk is open for business. (Eff. January 1, 2000.)

Rule 1840(b) Receipt of Data

Upon receiving a document transmitted electronically for filing with the Court from a qualified electronic filer, the Clerk shall cause to be electronically transmitted to the filer a notice of lodging of the document with the Court. The notice of lodging shall confirm the date and time of receipt of the document by the Court for review and filing. The Clerk shall thereafter determine if the document is acceptable for filing with the Court. (Eff. January 1, 2000.)

Rule 1840(c) Errors or Malfunctions

If for any reason the Court does not receive an electronically transmitted document for lodging and filing with the Court from a qualified electronic filer, the filer will not receive an electronically transmitted notice of lodging of the document from the Court. The Court shall not be liable for malfunction or errors occurring in the electronic transmission of a document to the Court for filing. The confirmation of receipt, lodging and filing of the document by the Court is the sole responsibility of the filer. (Eff. January 1, 2000.)

Rule 1840(d) Acceptance of Filing By EFS

Documents electronically transmitted to the Court for filing shall be checked by the Clerk for required data elements once the document has been lodged with the Court. Upon the Clerk's acceptance of the lodged document for filing with the Court, the Clerk shall cause to be electronically transmitted to the filer a notice of acceptance of the document for filing with the Court. The notice shall set forth the date and time the document was filed with the Court. The confirmation of filing of the document by the Court and verification of the accuracy of the document filed by the Court shall be the sole responsibility of the filer. (Eff. January 1, 2000.)

Rule 1840(d)(1) Rejected Filings

If an electronically transmitted document is lodged with the Court but subsequently determined to be unacceptable for filing, the Clerk shall cause to be electronically transmitted to the filer a notice of rejection of the document for filing with the Court. The notice shall set forth the grounds for rejection of the document. It shall be the responsibility of the filer to resubmit rejected documents with appropriate corrections to the Court for filing. The Court will retain a log confirming the rejection of electronically transmitted documents (Eff. January 1, 2000.)

Rule 1840(d)(2) Errors or Malfunction

If for any reason the notice of rejection of filing is not transmitted to or received by the qualified electronic filer, the Court shall not be liable for malfunction or errors occurring in the electronic transmission or receipt of said notice. The confirmation of receipt, lodging, subsequent submission of rejected documents with corrections and the filing of documents with the Court electronically is the sole responsibility of the filer. (Eff. January 1, 2000.)

Rule 1840 (e) Judicial Council Forms (CRC 982.9)

The act of electronically filing a form approved or adopted by the Judicial Council shall constitute a certification by the qualified electronic filer that the form is a true and correct copy of the Judicial Council form. (Eff. January 1, 2000.)

Rule 1840 (f) Endorsement

Rule 1840(f)(1)

The Clerk's endorsement of documents electronically transmitted to the Court for filing shall consist of the words "Electronically filed by Superior Court of California, County of San Bernardino" followed by the date and time of filing and the Executive Officer/Clerk's printed name. (Eff. January 1, 2000.)

Rule 1840 (f)(2)

Electronically filed documents so endorsed carry the same force and effect as a manually affixed endorsement stamp with the Clerk's signature and initials. (Eff. July 1, 1998, amended eff. January 1, 2000.)

Rule 1840 (g) Summons (CCP 412.20, 415.10)

A summons electronically transmitted to the Court shall be issued by and filed with the Court. The printed name of the Executive Officer/Clerk's name preceded by the words "Electronically Issued By" shall be affixed to the Clerk's signature line and shall carry the same force and effect as a sealed and issued summons. (Eff. July 1, 1998, amended eff. January 1, 2000.)

Rule 1840(h)

Qualified electronic filers required to pay or deposit filing fees, convenience fees and/or transaction fees shall establish a payment relationship with the Court and/or one or more private sector firms under contract with the Court for payment of filing fees and convenience fees and/or transaction fees imposed as a condition for processing an electronically filed document. (Eff. January 1, 2000.)

Rule 1840(i) Inquiry/Viewing

Public access, inquiry and viewing of the Court's electronic records shall be available subject to the Court's maintenance and processing schedule and shall be governed by California Standards of Judicial Administration Section 38. (Eff. January 1, 2000.)

Rule 1840 (j) Certification

Certified copies of electronically filed documents may not be obtained electronically. (Eff. January 1, 2000.).

Rule 1840(k) Signed Documents

Rule 1840 (k)(1) Possession of Signed Document

A party who electronically files a document represents that a signed copy of the document is in his or her possession or control. (Eff. July 1, 1998.)

Rule 1840 (k)(2) Demand For Signed Document

At any time after filing or service of an electronically filed document, the Court, or any party to the action, may require the filing party to produce the signed copy of the electronically filed document. The demand shall be served on all other parties but shall not be filed with the Court. (Eff. July 1, 1998, amended eff. January 1, 2000.)

Rule 1840 (k)(3) Examination of Signed Document

If a demand for production of the signed copy of the electronically filed document is made, the parties shall arrange a meeting at which the signed copy can be examined. (Eff. July 1, 1998, amended eff. January 1, 2000.)

Rule 1840 (l) Attachment

Attachments to electronically filed documents may be scanned or shall be in the format specified in the EFS User's Manual. (Eff. July 1, 1998, amended eff. January 1, 2000.)

Rule 1840 (m) Electronically Mailed Service

In circumstances where documents, including accompanying attachments, may be served between parties in an action by mail, express mail, overnight delivery, or facsimile transmission, electronic service of textual documents and documents in image form may be authorized by Court order or when a party or an attorney for a party has executed an agreement with the Court for electronic filing and service.

The Court may issue, file, and serve notices, orders, and other documents electronically, pursuant to a Court order or when a party or an attorney for a party has executed an agreement with the Court for electronic filing and service.

An electronic mail address is rebuttably presumed valid for a particular receiver if the receiver files documents electronically with the Court from the address, and the Court, the party or attorney for a party serving a document electronically on the receiver has no notice that the address is invalid.. If served pursuant to this rule, time is calculated as set forth in Code of Civil Procedure section 1013(e). (Eff. January 1, 2000.)

Rule 1840(n) Change of Electronic Mail Address

An attorney or unrepresented party whose electronic mail address changes while an action is pending shall serve and file written notice of the change of address. (Eff. January 1, 2000.)

Rule 1850 Document Format

All electronically filed documents shall be in the format specified in the EFS User's Manual. (Eff. January 1, 2000.)

RULE 1860 ELECTRONIC FILING SYSTEM INQUIRIES

Inquiries, disputes, or complaints regarding any aspect of the Electronic Filing System may be directed to: Court Executive Office 172 West Third Street, Second Floor, San Bernardino, CA 92415-0302, (909) 387-6500. (Eff. January 1, 2000.)

CHAPTER 19
MISCELLANEOUS

RULE 1900 COURTROOM DECORUM

All attorneys, litigants, witnesses and spectators shall be required to dress and conduct themselves in a manner consistent with the traditional dignity of the Court. Any Judge may, in his discretion, refuse to permit any witness, either litigant or otherwise, to take the stand and testify unless his or her attire and appearance shall be in conformance with this policy. No person shall be permitted to smoke, chew gum or tobacco, or to create any disturbance or distraction while Court is in session. (Former Rule 1610, eff. May 27, 1982. Renumbered as Rule 1900, eff. July 1, 1998.)

RULE 1910 APPOINTMENT OF MEDICAL EXAMINERS AND PSYCHIATRISTS

Medical examiners and psychiatrists shall be appointed from lists of persons who are qualified to act as examiners and witnesses, which lists are maintained by the Court's District Offices under the supervision of the Presiding Judge. (Former Rule 1810, eff. May 27, 1982. Renumbered as Rule 1910, eff. July 1, 1998.)

RULE 1920 DEPOSITIONS

Any deposition returned to the Court may be opened by the clerk at the request of counsel for any party. The clerk shall note who requested the deposition to be opened and the date. Only the original deposition on file with the clerk shall be used for impeachment purposes unless the Court permits other methods. (Former Rule 1910, eff. Jan. 1, 1989. Renumbered as Rule 1920, eff. July 1, 1998.)

RULE 1921 NOTICE OF DEPOSITION

Notices of deposition will not be accepted for filing as part of the case file except by Court order. Any motions filed in connection with a deposition must contain a copy of the notice of deposition. (Former Rule 2220, eff. Jan. 1, 1989. Renumbered as Rule 1921, eff. July 1, 1998.)

PROBATE POLICY MEMORANDUM
SAN BERNARDINO COUNTY, CALIFORNIA

Revised April 1998

Appendix I

FOREWORD

This Probate Policy Memorandum is issued by the Superior Court of San Bernardino County to guide attorneys and parties in preparing and presenting matters and to promote uniformity of probate procedures. These policies, when not statements of law, are not intended to have the force of law and do not prevent the exercise of judicial discretion.

THE MANUAL IS NOT ALL INCLUSIVE AND ATTORNEYS SHOULD CONSULT
THE PROBATE CODE AND APPROPRIATE STATUTES IN ALL MATTERS.

TABLE OF CONTENTS
APPENDIX I

	<u>PAGE</u>
 PART ONE GENERAL PROCEDURAL GUIDE	
101 WRITTEN POLICY MEMORANDA.....	90
102 APPROVED MATTERS.....	90
104 ATTORNEYS AND PARTIES TO ANNOUNCE THEIR NAMES.....	90
105 COMMISSIONERS AND TEMPORARY JUDGES.....	90
106 CONTINUANCE TO PERMIT FILING OF CONTEST OR OBJECTION	91
107 CONTESTED MATTER.....	91
 PART TWO FORMS, NOTICES, AFFIDAVITS, AND DECLARATIONS	
201 FORMS AVAILABLE AT CLERK'S OFFICE	92
202 NEWSPAPERS OF GENERAL CIRCULATION.....	92
203 NOTICE RE SPECIAL LETTERS	92
204 PROBATE HEARING ONCE NOTICED CANNOT BE ADVANCED	92
205 NOTICE—REQUISITE MAILING OR DELIVERY; UNKNOWN ADDRESS	92
 PART THREE EXECUTORS AND ADMINISTRATORS	
302 SPECIAL ADMINISTRATION.....	93
304 PUBLIC ADMINISTRATOR	93
 PART FOUR BONDS	
401 BOND ON SALE OF REAL ESTATE	94
402 BOND ON PETITION FOR AUTHORITY TO BORROW MONEY	94
404 PRELIMINARY DISTRIBUTION BOND.....	94
405 NONRESIDENT PERSONAL REPRESENTATIVE.....	94
 PART FIVE INDEPENDENT ADMINISTRATION	
501 PRELIMINARY DISTRIBUTION	95
502 FINAL REPORT AND PETITION FOR FINAL DISTRIBUTION.....	95

PART SIX PETITION, MOTIONS, INVENTORIES, AND ORDERS

601	CAPTIONS	96
602	USE OF PRINTED FORMS	96
603	FILING OF PLEADINGS	96
604	ALLEGATIONS IN PETITION RE HEIRS	96
605	COMPLETE ADDRESS IN PETITION OR REPORT	96
606	LIMITATIONS ON PETITIONS FOR INSTRUCTIONS	97
607	EX PARTE MATTERS	97
608	EX PARTE ORDERS MUST BE COMPLETE.....	97
609	EX PARTE ORDERS WILL NOT BE GRANTED UNLESS SPECIAL NOTICE IS WAIVED	97
610	DESCRIPTION OF REAL PROPERTY	97
611	SPECIFICALLY BEQUEATHED PROPERTY	97
612	REAL PROPERTY DISTRIBUTION ORDERS	98
613	FAMILY ALLOWANCE; ORDERS FOR CONTINUING PAYMENTS MUST STATE TERMINATION DATE	98
614	PROBATE ORDERS.....	98
615	NUNC PRO TUNC ORDERS CORRECTING CLERICAL ERRORS	98
617	DEATH OR MISSING PERSONS	99

PART SEVEN CREDITORS' CLAIMS

702	ALLOWANCE OR REJECTION OF CLAIMS	100
703	FUNERAL CLAIMS	100
704	CLAIMS OF PERSONAL REPRESENTATIVES AND THEIR ATTORNEYS	100
705	DISTRIBUTION.....	100

PART EIGHT SALES

801	CONDOMINIUMS, COMMUNITY OR COOPERATIVE APARTMENTS	101
802	SALE OF REAL AND PERSONAL PROPERTY AS A UNIT	101
803	TANGIBLE PERSONAL PROPERTY	101
804	SALES OF DEPRECIATING AND PERISHABLE PROPERTY	102
805	SALES OF SECURITIES	102
806	BROKER'S COMMISSIONS	102
807	COURT CONFIRMATION OF PRIVATE SALES	102

PART NINE ACCOUNTS, FEES AND DISTRIBUTIONS

901	ACCOUNTING REVIEW	104
902	WAIVER OF ACCOUNTING	104
903	ATTORNEY'S SIGNATURE	104
904	COMPENSATION MUST BE STATED.....	104
905	REPORT ACTIONS RE CREDITORS.....	105
906	DESCRIPTION OF ASSETS	105
907	MANNER OF ASSET DISTRIBUTION	105
908	INVENTORIES AND ACCOUNTINGS	106
909	COSTS GENERALLY NOT ALLOWED COUNSEL OR ADMINISTRATOR	106

**PART TEN DISPOSITION WITHOUT PROBATE AND PETITIONS TO SET
ASIDE SMALL ESTATES**

1001	PETITION TO SET ASIDE SMALL ESTATES	108
------	---	-----

PART ELEVEN FAMILY PROTECTION

1101	HOMESTEADS.....	109
1102	PETITION FOR FAMILY ALLOWANCE	110

PART TWELVE PETITIONS TO SET ASIDE SPOUSAL PROPERTY

1201	REQUIRED ALLEGATIONS IN SUPPORT OF CLAIMED PROPERTY AS PASSING OR BELONGING TO SURVIVING SPOUSE.....	111
------	--	-----

PART THIRTEEN GUARDIANSHIPS OF MINORS

1301	APPOINTMENT OF GUARDIAN OF MINOR.....	112
1302	SUPPORTING DOCUMENTATION	112
1303	TEMPORARY APPOINTMENT OF GUARDIAN OF MINOR	112
1304	ORDER PRESCRIBING AND DISPENSING NOTICE RE APPOINTMENT OF GUARDIAN OF MINOR	112
1305	GUARDIANSHIP INVESTIGATIONS.....	112
1306	CONSULTATION WITH OTHER DEPARTMENTS RE HABEAS CORPUS OR CUSTODY PROCEEDINGS	113
1307	GUARDIANS OF THE PERSON WHEN ADOPTION PROCEEDINGS ARE PENDING.....	113
1308	INCREASING AND DECREASING BOND OF GUARDIAN.....	113
1309	DUTIES OF GUARDIAN—LIABILITY OF PARENTS TO SUPPORT CHILD.....	113

1310	INVESTMENT BY GUARDIANS	113
1311	ACCOUNTS OF GUARDIANSHIP	114
1312	DUTIES AND LIABILITIES	114
1313	REVIEW HEARINGS/STATUS REPORTS	114
1314	ANNUAL RENEWAL OF GUARDIANSHIP LETTERS	114
1315	GUIDELINES FOR APPOINTMENT OF COUNSEL IN GUARDIANSHIP OF MINORS	114

PART FOURTEEN PROBATE CONSERVATORSHIPS

1400	PETITIONS	115
1401	APPOINTMENT OF COURT INVESTIGATOR	115
1402	ATTORNEYS FOR CONSERVATEES	115
1403	RESPONSIBILITIES OF THE CONSERVATOR	115
1404	INVENTORY AND APPRAISEMENT OF SUCCESSOR CONSERVATOR	115
1405	SUBSTITUTED JUDGMENT - CREATION OF TRUSTS.....	116
1406	ACCOUNTINGS	116
1407	COURT INVESTIGATOR REVIEW/FEEs	117
1408	CHANGE OF RESIDENCE OF THE CONSERVATEE	117
1409	INDEPENDENT POWERS.....	117
1410	TERMINATION.....	118
1411	CHANGE OF VENUE	118
1412	NOTICE OF HEARING ON EX PARTE PETITION FOR APPOINTMENT OF TEMPORARY CONSERVATOR	118
1413	CONFIDENTIAL INCOME TAX RETURNS	118

PART FIFTEEN TRUSTS

1501	BENEFICIARIES TO BE LISTED IN PETITION.....	119
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PART ONE

GENERAL PROCEDURAL GUIDE

RULE 101 WRITTEN POLICY MEMORANDA

(a) From time to time questions of policy with respect to probate matters will be determined by the Judges, reduced to writing, and made available to members of the Bar.

(b) Unless specific written orders are issued to the contrary, these policies are applicable in Court Districts. (Rev. Dec. 1993)

RULE 102 APPROVED MATTERS

(a) Calendar notes are usually available ten (10) days before the hearing date. Notes are available on the Internet at www.sbcounty.gov/courts/probate. In the absence of access to the Internet, the notes may be obtained from the probate clerk in the clerk's office.

(b) When a question arises concerning a particular note the Probate Attorney may be contacted for clarification of the note. The Probate Attorney can be contacted through the clerk's office.

(c) When a case is not ~~on the approved list, counsel will normally be expected to be present at the call of the calendar to supply any additions or explanations necessary to warrant the approval of the matter recommended for approval, the~~ Petitioner or his attorney may request a four (4) week continuance from the probate clerk if the matter was not previously set or continued by the Court.

(Eff. July 1, 1998 as amended January 1, 1999. As amended, eff. January 1, 2003. As amended eff January 1, 2004.)

RULE 103 COURTROOM PROCEDURE

~~Attorneys and parties should not converse with or disturb the Clerk while Court is in session. (Former Rule 113, eff. Dec. 1993. Renumbered as Rule 103, rev. July 1, 1998.) Deleted eff. January 1, 2004.~~

RULE 104 ATTORNEYS AND PARTIES TO ANNOUNCE THEIR NAMES

All persons appearing at probate hearings are to announce their names and identify their representation or status when their case is called. (Former Rule 112, rev. Dec. 1993. Renumbered as Rule 104 and amended, eff. July 1, 1998.)

RULE 105 COMMISSIONERS AND TEMPORARY JUDGES

Before the call of the calendar, parties may be advised in open Court that the matters on the calendar will be heard by a Commissioner or a temporary Judge. Unless the Court is informed to the contrary, all parties shall then be deemed to have stipulated that such person may hear the matter as a temporary Judge, and the minutes will so read. (Former Rule 106, rev. Dec. 1993. Renumbered as Rule 106 and amended, eff. July 1, 1998.)

RULE 106 CONTINUANCE TO PERMIT FILING OF CONTEST OR OBJECTION

When a petition for the probate of a will or other matter is called for hearing, if any attorney or party appears and orally objects and declares that a written contest or objection will be filed, the Court will continue the hearing for a reasonable length of time (normally four (4) weeks) with the understanding that if such written contest or objection is not actually on file prior to the continued date the hearing will nevertheless proceed. (Former Rule 108, rev. Dec. 1993. Renumbered as Rule 106, eff. July 1, 1998.)

RULE 107 CONTESTED MATTERS

All matters, regardless of the time estimate, which cannot be heard at the original hearing, will be continued for status conference, for sufficient time to allow the parties to complete discovery and to prepare for trial. At the status conference the Court will determine if the matter is ready for trial. If it is not ready for trial, it may be continued for further status conference. Short cause matters for which a jury is not required may be heard in the Probate Department or may be referred to another department for assignment. (Former Rule 109, rev. Dec. 1993. Renumbered as Rule 107 and amended, eff. July 1, 1998. As amended, eff. January 1, 2003.)

PART TWO

FORMS, NOTICES, AFFIDAVITS, AND DECLARATIONS

RULE 201 FORMS AVAILABLE AT CLERK'S OFFICE

A list of Judicial Council or other forms available at the Clerk's Office may be obtained from the Clerk (Rev. Dec. 1993. As amended eff. January 1, 2003.)

RULE 202 NEWSPAPERS OF GENERAL CIRCULATION

- (a) The Clerk maintains a list of newspapers of general circulation.
- (b) Petitioner or petitioner's attorney shall arrange for publication and shall mail copies of said Notice of Petition to Administer Estate to the heirs, devisees, legatees, and all persons specifically named in the body of any Will, including alternate executors, and file the required Proof of Service by Mail and Proof of Publication with the Court.
- (c) When a petition for appointment of a successor estate representative is set for hearing, the Will having been previously admitted to probate, notice shall be given in the manner described in paragraph (b), except that no publication of notice shall be made. (Rev. Dec. 1993, as amended July 1, 1998.)

RULE 203 NOTICE RE SPECIAL LETTERS

Petitions for special letters of administration ordinarily will not be granted without notice to the surviving spouse, the person nominated as executor, or any other person who, on examination of the applicant, appears to be equitably entitled to notice. If it appears that a *bona fide* contest exists, the Court will consider appointing a neutral person or corporation as special administrator. (Former Rule 205, rev. Dec. 1993. Renumbered as Rule 203 and amended, eff. July 1, 1998.)

RULE 204 PROBATE HEARING ONCE NOTICED CANNOT BE ADVANCED

When a hearing on a probate matter has been noticed, or when it has been noticed and continued to a definite date, the matter cannot be heard before the date set by means of a new petition, an amended petition, a new notice, or otherwise, except by order of the Court. (Former Rule 206, rev. Dec. 1993. Renumbered as Rule 204 and amended, eff. July 1, 1998.)

RULE 205 NOTICE—REQUISITE MAILING OR DELIVERY; UNKNOWN ADDRESS

Unless the Court dispenses with notice, if the address of the person to whom a notice or other paper is required to be mailed or delivered is not known, a declaration shall be submitted to the Court with regard to the efforts made in attempting to ascertain the last known address of said individual. (Former Rule 207, rev. Dec. 1993. Renumbered as Rule 205 and amended, eff. July 1, 1998.)

PART THREE

EXECUTORS AND ADMINISTRATORS

RULE 302 SPECIAL ADMINISTRATION

A petition for appointment of special administrator may be filed in a separate petition following or concurrently with a petition for probate. Special letters of administration will not normally be granted unless a petition for probate and for general letters is on file. Special letters may be revoked if general administration is not timely pursued. (Former Rule 303, rev. Dec. 1993. Renumbered as Rule 302 and amended eff. July 1, 1998.)

RULE 304 PUBLIC ADMINISTRATOR

(a) The Public Administrator serves primarily to protect property of a decedent that is subject to loss, injury, waste, or misappropriation. Unless the Public Administrator has consented, the Court will not normally appoint the Public Administrator to serve as a personal representative at the request of private parties.

(b) Reasonable notice and opportunity to respond is to be given to the Public Administrator before he will be appointed as a Special or General Administrator.

(c) Cases as to which the Public Administrator is to serve as either Special or General Administrator or Administrator With Will Annexed are normally set in the Central District. (Rev. Dec. 1993.)

PART FOUR

BONDS

RULE 401 BOND ON SALE OF REAL ESTATE

A secured promissory note taken as part of the consideration is personal property, and is to be considered as such in determining the amount of any bond. (Rev. Dec. 1993.)

RULE 402 BOND ON PETITION FOR AUTHORITY TO BORROW MONEY

Petitions for authority to borrow money should set forth the amount of bond in force and the amount of loan proceeds. If no additional bond is required, or if bond is waived, that fact should be alleged. (Rev. Dec. 1993.)

RULE 404 PRELIMINARY DISTRIBUTION BOND

(a) If a preliminary distribution is made before the time for filing creditors' claims has expired, a bond must be furnished by the distributees (Probate Code Section 11622). After time for filing claims has expired, the Court normally requires a distributee's bond unless sufficient facts have been set forth in the petition or in accounting to show the ability of the estate to meet its other obligations. (Also, see Probate Policy Memorandum Rule 902 infra.) (Eff. July 1, 1998)

(b) When a bond is not required by the Court, the order must include a finding that the time for filing or presenting claims against the estate has expired, and that all uncontested claims have been paid or are sufficiently secured. (Rev. Dec. 1993.)

RULE 405 NONRESIDENT PERSONAL REPRESENTATIVE

Bonds will normally be required of nonresident personal representatives notwithstanding a waiver in the Will. No bond need be posted by nonresident personal representatives if the bond is waived by all heirs and devisees of the estate subject to administration in California and there are no non-ascertained heirs or beneficiaries of the estate and no minors not represented by a Court appointed guardian who has waived such bond. (Rev. Dec. 1993.)

PART FIVE

INDEPENDENT ADMINISTRATION

RULE 501 PRELIMINARY DISTRIBUTION

If there is to be a preliminary distribution to a trustee who has not been appointed and who has not been given at least fifteen (15) days notice of a hearing on such petition, the trustee must file with the Court a consent to act as trustee before the distribution is ordered. (Former Rule 504, rev. Dec. 1993. Renumbered as Rule 501, eff. July 1, 1998.)

RULE 502 FINAL REPORT AND PETITION FOR FINAL DISTRIBUTION

The report and petition for final distribution should describe all independent acts taken without prior Court approval, and an allegation shall be made either (1) that the fifteen (15) day notice of proposed action was duly waived or served when required and that no objections were received or how any such objections were dealt with, or (2) that this procedure was not complied with. The originals of the notice of proposed action or waivers with attached affidavits or declarations of mailing shall be available to, but need not be filed with, the Court. If certain acts have been properly reported in a prior petition for distribution, they need not be repeated. (Former Rule 505, rev. Dec. 1993. Renumbered as Rule 502, eff. July 1, 1998.)

PART SIX

PETITION, MOTIONS, INVENTORIES, AND ORDERS

RULE 601 CAPTIONS

The captions in all petitions and motions filed in probate matters shall set out a complete, correct and concise summary of the prayer in order that proper notice may be given. No petition will be accepted for filing without such caption. All captions shall include a reference to the Probate Code Section which authorize the relief requested. (Rev. Dec. 1993.)

RULE 602 USE OF PRINTED FORMS

(a) The latest version of printed mandatory forms of petitions, orders and other documents approved by the Judicial Council shall be used in all cases. If a form is inadequate for a given circumstance, an interlineation may be made on the form or an addendum may be attached to the form. When the Judicial Council has not mandated use of a form counsels should draft their own documents.

(b) When printed forms are reproduced on the front and back of a single sheet, the back sheet must be inverted (“tumbled”) so that it can be read when clipped at the top in a file folder. (Rev. Dec. 1993, as amended, eff. July 1, 1998. As amended, eff. January 1, 2003.)

RULE 603 FILING OF PLEADINGS

(a) Every petition, including but not limited to petitions for probate, conservatorship and guardianship, shall be accompanied by a Certificate of Assignment.

(b) All supporting papers for every petition must accompany the petition or be filed within a reasonably short time thereafter.

(c) All petitions shall be accompanied by a proposed Order. (Eff. July 1, 1998.)

RULE 604 ALLEGATIONS IN PETITION RE HEIRS

In petitions for letters in which one person or a class of persons is listed as an heir or heirs, the non-existence of superior right heirs or classes of heirs should be alleged; reference being made specifically to the classes whose non-existence is claimed. (Rev. Dec. 1993.)

RULE 605 COMPLETE ADDRESS IN PETITION OR REPORT

(a) When an address is required in a petition or report a full and complete mailing address should be set forth, or a special allegation made explaining why the petitioner cannot comply with this requirement. (See Probate Policy Memorandum section 205)

(b) Nothing herein is intended to or should prevent an immediate filing of the original petition although complete addresses are unknown but may be ascertained within a few days. New or corrected addresses should be reported to the probate procedures clerk in writing when the fact becomes known and appropriate steps to give proper notice shall be taken. (Rev. Dec. 1993.)

RULE 606 LIMITATIONS ON USE OF PETITIONS FOR INSTRUCTIONS

(a) The use of petitions for instructions by executors or administrators pursuant to Probate Code section 9611 is limited to those matters where no other or different procedure is provided by statute. The caption should specify in detail exactly what instructions are sought. A caption merely entitled "Petition for Instructions" is incomplete and shall not be used.

(b) The manner in which an estate should be distributed can be determined only by a petition for distribution or by a petition to determine heirship, not a petition for instructions. (Former Rule 611, rev. Dec. 1993. Renumbered as Rule 606 and amended, eff. July 1, 1998.)

RULE 607 EX PARTE MATTERS

Attorneys for parties should call the probate clerk to determine the times dates and courtroom at which the Judge will consider ex parte matters. (Rev. Dec. 1993. Amended, eff. January 1, 2003. As amended, eff. July 1, 2003.)

RULE 608 EX PARTE ORDERS MUST BE COMPLETE

All applications for ex parte orders must be accompanied by an order. Because no testimony is taken in connection with ex parte applications, the petition must contain sufficient evidentiary matter to justify granting the prayer. Conclusions or statements of ultimate facts are not sufficient and a foundation should be shown for the affiant's personal knowledge. (Rev. Dec. 1993.)

RULE 609 EX PARTE ORDERS WILL NOT BE GRANTED UNLESS SPECIAL NOTICE IS WAIVED

All applications for ex parte orders must allege the existence or non-existence of requests for special notice on file. If any such notice has been requested, the ex parte application must contain a waiver of the request, a declaration that the requesting party was given at least twenty-four (24) hours' telephonic notice of the application, or a statement that the subject of the application is not covered by Probate Code section 1250(c). (Rev. Dec. 1993, as amended, eff. July 1, 1998.)

RULE 610 DESCRIPTION OF REAL PROPERTY

Real property of the estate shall be fully described in the inventory and all petitions and orders dealing with it by the legal description, assessors parcel number and street address, if any. If the property is unimproved it should be so noted. (Former Rule 617, rev. Dec. 1993. Renumbered as Rule 610 and amended, eff. July 1, 1998.)

RULE 611 SPECIFICALLY BEQUEATHED PROPERTY

A petition for sale of stock or personal property must allege whether the property is specifically bequeathed. If the property is so bequeathed, the consent of the legatee must accompany the petition. (Eff. July 1, 1998.)

RULE 612 REAL PROPERTY DISTRIBUTION ORDERS

Orders containing provisions for the distribution of real property shall set forth a mailing address of the distributee. (Former Rule 614, rev. Dec. 1993. Renumbered as Rule 612 and amended eff. July 1, 1998.)

RULE 613 FAMILY ALLOWANCE: ORDERS FOR CONTINUING PAYMENTS MUST STATE TERMINATION DATE

All orders for family allowance shall include the commencement date and the termination date for payments. The Court will not make orders for continuing payments of family allowance to run until the further order of the Court. (Former Rule 610, rev. Dec. 1993. Renumbered as Rule 613 and amended eff. July 1, 1998.)

RULE 614 PROBATE ORDERS

~~(a) Orders or documents requiring the signature of the Judge must ordinarily be submitted to the probate attorney for review prior to presenting it the Court for signature.~~

~~(b)~~ (a) All petitions, orders or decrees shall be drawn and submitted by the petitioner or attorney involved. The caption shall clearly and fully identify its contents. A caption merely entitled "Petition" or "Order" is incomplete and shall not be used.

~~(c)~~ (b) All orders or decrees in probate matters must be complete in themselves. They shall set forth all matters actually passed upon by the Court, the relief granted, the names of any persons affected, the descriptions of any property affected and the amounts of any money affected. Probate orders should be so drawn that their general effect may be determined without reference to the petition on which they are based.

~~(d)~~ (c) While in orders settling accounts it is proper to use general language approving the account, the report, and the acts reported therein, it is not sufficient in any order to recite merely that the petition as presented is granted or that the relief sought in the petition on file is given. Orders settling accounts or orders made on waivers of account must also contain a statement as to the balance and description of the estate on hand, specifically noting the amount of cash included in said balance.

~~(e)~~ (d) Three (3) lines of the contents of the order must appear on the page upon which the Judge's signature is affixed. In no case should any matter appear after the signature of the Judge. (Former Rule 613, rev. Dec. 1993. Renumbered as Rule 614 and amended, eff. July 1, 1998.) As amended eff. January 1, 2004.

RULE 615 NUNC PRO TUNC ORDERS CORRECTING CLERICAL ERRORS

(a) If, through any inadvertence, the minute order or the signed decree fails to state the order actually made by the Court, the Court will on its own motion, supported by an affidavit if deemed necessary, make a nunc pro tunc order correcting the mistakes.

(b) The nunc pro tunc order must not take the form of an amended order and should be substantially in the following form: "On the Court's own motion, to correct a clerical error, the (identify the order to be corrected, giving the title and the date thereof) is corrected by striking the following: (here set out the matter to be eliminated) and by inserting in lieu thereof the following: (here set out the correct matter)."

(c) The original order is not to be physically changed by the clerk, but it is to be used in connection with the nunc pro tunc order correcting it.

(d) To prevent further errors, not less than a complete clause or sentence should be stricken, even if it is intended to correct one word or a figure.

(e) "It is so ordered Nunc Pro Tunc as of (date) " should be just prior to the Judge's signature. (Former Rule 616, rev. Dec. 1993. Renumbered as Rule 615, eff. July 1, 1998.)

RULE 617 DEATH OR MISSING PERSONS

Proceedings should not be initiated under Probate Code Section 200 to establish the death of missing persons. Rather, the provisions of Part 12 of Division 7 (commencing at Section 12400) are to be used. (Former Rule 618, rev. Dec. 1993. Renumbered as Rule 617, eff. July 1, 1998.)

PART SEVEN

CREDITORS' CLAIMS

RULE 702 ALLOWANCE OR REJECTION OF CLAIMS

(a) The Court does not require any evidence that a Notice of Rejection has been sent in response to a late creditor's claim.

(b) Except as to claims by personal representatives and their attorneys (see Rule 707 below), the Court will not approve or reject claims when the personal representative is acting under the I.A.E.A. unless requested to do so in writing and good cause is shown. (Former Rule 704, rev. Dec. 1993. Renumbered as Rule 702 and amended, eff. July 1, 1998.)

RULE 703 FUNERAL CLAIMS

(a) Ordinarily, funeral claims approved by the executor or administrator which are reasonable on their face will be approved by the Court for immediate payment without awaiting expiration of the time within which to pay creditors. Funeral claims deemed extraordinary in amount will not be approved for immediate payment unless an affidavit is filed by the executor or administrator setting forth facts which justify the unusually large expenditure by reason of the value of the estate and the standard of living adopted by the decedent prior to his or her demise.

(b) When accrued interest has been paid in connection with the delayed payment of claims for interment expenses, a specific allegation must be made in the report accompanying the account in which credit for such payment has been taken, setting forth reasons for delay in making payment. The Court will not allow credit for payment of interest unless the delay in payment of the claim is justified by the facts. "Costs of interment" as used in Health and Safety Code Section 7101 shall be strictly and narrowly construed in approving interest on funeral expenses. (Former Rule 706, rev. Dec. 1993. Renumbered as Rule 703, eff. July 1, 1998.)

RULE 704 CLAIMS OF PERSONAL REPRESENTATIVES AND THEIR ATTORNEYS

A creditor's claim by the personal representative or his or her attorney should be so noted as such. Such a claim must be processed as provided in Probate Code Section 9252 notwithstanding authority to act under the I.A.E.A. Where there is more than one personal representative, a creditor's claim submitted by one of the personal representatives will not be approved by the Court unless either (1) it is first approved by all other personal representatives or (2) a copy of said representative's claim has been served on the other personal representatives and ten days have passed without rejection by any of them. (Former Rule 707, rev. Dec. 1993. Renumbered as Rule 704, eff. July 1, 1998.)

RULE 705 DISTRIBUTION

Whether or not accountings are required, creditors' claims are to be reported in petitions for distribution as more fully described in Rule 905 of this Policy Memorandum. (Former Rule 708, rev. Dec. 1993. Renumbered as Rule 705, eff. July 1, 1998.)

PART EIGHT

SALES

RULE 801 CONDOMINIUMS, COMMUNITY OR COOPERATIVE APARTMENTS

(a) A condominium is an interest in real property and must be sold as such. A community or cooperative apartment is personal property and must be sold as such. However, the overbid on such assets will be computed on the same basis as in sales of real property, and brokers' commissions will be allowed on the same basis as in sales of real property.

(b) The sale of a cooperative apartment will not be confirmed subject to the purchaser's later obtaining the acceptance of a Board of Directors or other governing body; therefore, the prospective purchaser should obtain acceptance before seeking Court confirmation. (Former Rule 805, rev. Dec. 1993. Renumbered as Rule 801, eff. July 1, 1998.)

RULE 802 SALE OF REAL AND PERSONAL PROPERTY AS A UNIT

When real and personal property of the estate is sold at a private sale as a unit, the petition for confirmation of sale shall clearly set forth the reasons for belief on the part of the personal representative that such sale is in the best interests of the estate. Sales of furniture and furnishings with dwelling houses, water stocks with lands served thereby, and similar transactions will require no detailed explanation. Sales of unrelated personal property should, however, be explained in detail. (Former Rule 806. Rev. Dec. 1993. Renumbered as Rule 802 and amended, eff. July 1, 1998.)

RULE 803 TANGIBLE PERSONAL PROPERTY

(a) Necessity for Appraisal. Whenever a Court order is being requested to approve or confirm the sale of tangible personal property, whether such order is or is not required by the Probate Code, an appraisal by a Probate Referee must first be made and filed. When necessary, a partial inventory and appraisement may be filed for this purpose, or a letter appraisal may be obtained from the Court appointed Referee or an alternate appraiser if authorized in accordance with Probate Code Section 8903.

(b) Commissions. Commissions on sales of tangible personal property will be allowed only to one holding a broker's license authorizing him to deal in the type of property involved. A commission will be allowed on the original bid only when the commission is requested in the return of sale. The amount of the commission is within the Court's discretion and will not ordinarily exceed (1) six percent (6%) as to sales in which a broker procured the bid presented to Court for confirmation or (2) three percent (3%) as to sales in which no broker procured the bid presented for confirmation. (Former Rule 811, rev. Dec. 1993. Renumbered as Rule 803, eff. July 1, 1998.)

RULE 804 SALES OF DEPRECIATING AND PERISHABLE PROPERTY

Vehicles such as automobiles and mobile homes may be sold as depreciating property. Efforts to expose the property prior to sale should be shown in either the report and final account or the petition to approve such sale (unless such sales are made under I. A. E. A.). (Former Rule 812, rev. Dec. 1993. Renumbered as Rule 804, and amended, eff. July 1, 1998.)

RULE 805 SALES OF SECURITIES

A verified petition for the sale of stocks, bonds, or other securities must set forth a minimum sale price as to all securities not listed on an established exchange or to be sold through a national market system on an interdealer quotation system by an S.E.C. registered broker dealer during the regular course of business. If the securities are "closely held", the petition must set forth the basis for fixing the minimum sales price. (Former Rule 813, rev. Dec. 1993. Renumbered as Rule 805 and amended, eff. July 1, 1998.)

RULE 806 BROKER'S COMMISSIONS

(a) On sales subject to Court confirmation, unless justified by special circumstances, the Court will not approve payment of a broker's commission in excess of (1) six percent (6%) as to sales in which a broker procured the bid presented to Court for confirmation or (2) three percent (3%) as to sales in which no broker procured the original bid presented for confirmation.

(b) Special circumstances may include the fact that the property has an appraised value or sales price of \$10,000.00 or less. Under such circumstances the Court will not approve payment of a broker's commission in excess of (1) ten percent (10%) as to sales in which a broker procured the bid presented to Court for confirmation; or, (2) five percent (5%) as to sales in which no broker procured the bid presented for confirmation. (Eff. July 1, 1998.)

RULE 807 COURT CONFIRMATION OF PRIVATE SALES

(a) Bid Deposit. Ten percent (10%) of the total sales price must be deposited with the personal representative. However, exception may be made under special circumstances, for example when the sale is FHA or VA financed.

(b) Junior Deeds of Trust. The Court will approve the taking of a promissory note secured by a junior deed of trust upon a showing that it serves the best interests of the estate. Such showing may require a showing or representation of efforts that were made to sell for cash or a showing of knowledge on the part of the heirs and devisees and lack of objection to acceptance of a junior deed of trust.

(c) Vesting of Title. The petition for confirmation must set forth the vesting of title in the buyer. The Court will not confirm a sale to a "nominee".

(d) Specifically Devised or Bequeathed Property. A sale of specifically devised or bequeathed real or personal property ordinarily will not be confirmed unless the written consent of the specific devisee or legatee is filed with the petition for confirmation.

(e) Notice of Hearing on Return of Sale. In addition to all notices of hearings on return of sale required by law, notice should be given to (1) any specific devisee of such property and (2) any agent for the bid being presented to Court.

(f) Earnest Money Deposit by Increased Bidder. When a sale is confirmed to an overbidder, the overbidder, at the request of the personal representative, must submit at the time of the hearing cash or a certified or cashier's check in the amount of ten percent (10%) of the initial overbid. The personal representative should notify all known anticipated overbidders of this requirement.

(g) Overbid Form. The personal representative or counsel may obtain from the Court clerk a form to be completed on the overbid. This form is to be returned to the clerk before the order confirming the sale will be signed.

(h) Absence of Attorney for Estate at Confirmation Hearing. If the estate's attorney is absent from the hearing, the hearing will be continued, except where the fiduciary is present and requests that the sale proceed without the attorney. (Former Rule 823, rev. Dec. 1993. Renumbered as Rule 807 and amended, eff. July 1, 1998.)

PART NINE

ACCOUNTS, FEES AND DISTRIBUTIONS

RULE 901 ACCOUNTING REVIEW DATES

Accounting review dates are scheduled by the Probate Attorney in matters where an accounting is required. Accountings (or a status report in probate proceedings) shall be filed thirty (30) days prior to the accounting review date. Should the accounting (or status report) not be filed timely, the review date shall be continued to the date of the accounting. In the event no account or status report is filed, the review shall be continued as an order to show cause proceeding and both the estate representative and counsel shall be cited in to show cause why an accounting has not been filed. This rule is applicable to probate, guardianship, conservatorship and trust accountings. (Eff. July 1, 1998. Amended, eff. January 1, 2003. As amended eff. July 1, 2003.)

RULE 902 WAIVER OF ACCOUNTING

(a) Although a preliminary distribution may be made without an accounting, sufficient facts must be set forth in the petition to allow the Court to ascertain that the estate is solvent. See also Probate Policy Memorandum Rules 404 and 504.

(b) The waiver of account by the residuary beneficiary or beneficiaries is sufficient even though there are specific legatees and devisees, if the petition for distribution specifically enumerates the bequests and devisees, prays that they be distributed and alleges that there are sufficient assets to satisfy such specific bequests and devises. (Former Rule 903, rev. Dec. 1993. Renumbered as Rule 902, eff. July 1, 1998.)

RULE 903 ATTORNEY'S SIGNATURE

All accounts, petitions, and other pleadings, which include a request for attorneys fees, whether statutory or extraordinary in nature, shall also be signed by the attorney of record who joins in the petitioner's request for said fees. (Former Rule 905, rev. Dec. 1993. Renumbered as Rule 903, eff. July 1, 1998.)

RULE 904 COMPENSATION MUST BE STATED

(a) In a petition for distribution, whether or not accompanied by accounting, there shall be a calculation of the statutory compensation of the personal representative and the attorney in substantially the following form:

COMPUTATION OF STATUTORY FEES AND COMMISSIONS

Four percent (4%) on first \$100,000.00 or \$4000.00

Three percent (3%) on next \$100,000.00 or \$3000.00

Two percent (2%) on next \$800,000.00 or \$16,000.00

One percent (1%) on next \$9,000,000.00 or \$90,000.00

One-half percent (1/2%) on next \$15,000,000.00 or \$75,000.00

Reasonable amount on everything over \$25,000,000.00 to be determined by the court.

TOTAL \$_____

(b) Applications for extraordinary compensation will not be considered unless both the caption and prayer of the petition, and the notice of hearing of the petition, contain a reference to the application for extraordinary compensation. Such applications must be accompanied by an itemized description of services rendered, time expended, and hourly rate. Ordinarily, a request for extraordinary compensation is made when a petition for final distribution is filed. (Former Rule 907, rev. Dec. 1993. Renumbered as Rule 904 and amended, eff. July 1, 1998. Amended eff. January 1, 2003. As amended eff. July 1, 2003)

RULE 905 REPORT ACTIONS RE CREDITORS

(a) Known Creditors. In all petitions for final distribution, whether or not an accounting by the personal representative has been waived, the personal representative shall report what notices, if any, were given to known creditors.

(b) Director of Health Services. All petitions for final distribution shall allege compliance with Section 9202 of the Probate Code.

(c) Action on Creditors' Claims. It is not sufficient in reports accompanying accounts or in reports where an accounting is waived to allege merely that all claims have been paid, but the claims presented must be listed showing the claimant and the amount claimed, and the disposition of each claim. If any claim has been rejected; the date of service of notice of rejection of claim shall be stated. The foregoing must appear in the final report even though it may have appeared in whole or in part in prior reports.

(d) Late Filed Claims. As to creditors' claims filed after the creditors' claim period has expired, for purposes of closing estates, the Court does not require an allegation (1) that such claims have been rejected, or (2) that notices of rejection of such claims have been given, or (3) that time for suit on such claims have expired. (Former Rule 908, rev. Dec. 1993. Renumbered as Rule 908 and amended, eff. July 1, 1998.)

RULE 906 DESCRIPTION OF ASSETS

All petitions for distribution shall contain an allegation as to the character of the property, whether separate or community. The petition for distribution must describe in detail all property to be distributed, either in the body of the petition or in the prayer, or by a schedule incorporated in the petition for reference. (Former Rule 909, rev. Dec. 1993. Renumbered as Rule 909, eff. July 1, 1998.)

RULE 907 MANNER OF ASSET DISTRIBUTION

(a) Detail of proposed distribution shall be set forth in the body of the petition. Terms of the Will as to disposition of property and what is to be distributed under the laws of intestate succession shall be set forth.

(b) If there are unresolved issues regarding construction of the Will, heirship or succession, the petition should frame each of those issues for resolution by the Court.

(c) The decree of distribution, whether or not an accounting has been waived, must set forth specifically the manner in which the estate is distributed by showing the distributee's name, address and a description of the property or cash to be distributed. The order for distribution must be prepared so the Judge's signature is at the end. No exhibits or schedules shall follow the Judge's signature. In the event of the distribution of real property: (1) the property must be referenced by street address (if any), Assessors Parcel Number, and legal description; and (2) the address of the distributee must be set forth.

(d) If distribution may be made to the successor of an heir or beneficiary who died during administration, a Probate Code Section 13100 affidavit shall be filed in support of distribution to the successor. If the successor is the spouse of a deceased beneficiary under Probate Code Section 13500, the form of affidavit described in Section 13101 shall be used, except declarations (4) and (5) of part (a) of said section shall be replaced by the following declarations:

(4) "No proceeding is now being or has been conducted in California for administration of the decedent's estate. No election has been filed pursuant to Probate Code Section 13502 to have any of the described property administered as a portion of the decedent's estate."

(5) "No notice under Probate Code Section 13541 has been presented to the undersigned or recorded as of the date of this instrument."

If real property is to be distributed to a spouse of a deceased beneficiary under Probate Code Section 13500 et seq., the decree shall direct the distribution in a manner indicating the names of both the deceased beneficiary and his or her claimant spouse such as the following: "to Jane Doe, surviving wife of John Doe, deceased, pursuant to Probate Code Section 13500, et seq." (Former Rule 910, rev. Dec. 1993. Renumbered as Rule 907 and amended, eff. July 1, 1998.)

RULE 908 INVENTORIES AND ACCOUNTINGS (ESTATES & TRUSTS)

(a) Copies of investment account statements verifying the balance of cash and/or securities on hand shall be attached to all inventories and accountings. Letter verifications from the financial institution stating the balance as of the applicable date may be substituted for copies of statements. Substantial variation between the statement or verification and the balance reflected in the inventory or account shall be explained. (Eff. January 1, 2000.)

RULE 909 COSTS GENERALLY NOT ALLOWED COUNSEL OR ADMINISTRATOR

Duplicating, telephone, fax and other costs in probate and trust estates- Ordinarily the Court will not allow reimbursement for costs of duplication of documents, telephone calls, FAX (except court charges), parking fees or ordinary mileage incurred by the attorney, personal representative or trustee, as these are part of overhead, and should be absorbed in fees or commissions. (Eff. July 1, 2003.)

PART TEN

**DISPOSITION WITHOUT PROBATE AND
PETITIONS TO SET ASIDE SMALL ESTATES**

RULE 1001 PETITION TO SET ASIDE SMALL ESTATES

A petition to set aside estates under \$20,000 pursuant to Probate Code Section 6602 may be filed as a separate petition or as an alternative to a petition for letters. Allegations must be made as to why the set aside should be allowed if not consistent with decedent's Will and which persons are appropriate to receive the properties to be set aside. The supporting facts presented should be similar to those required under Rules 1101 and 1102 of this Policy Memorandum. (Former Rule 1203, rev. Dec. 1993. Renumbered as Rule 1001 and amended eff., July 1, 1998.)

PART ELEVEN

FAMILY PROTECTION

RULE 1101 HOMESTEADS

A petition for order setting apart probate homestead should contain the following information:

- (a) The name and current residence address of the surviving spouse (if any) and of all surviving minor children.
- (b) The date of birth of each surviving minor child.
- (c) The dates of filing of all inventories, supplemental inventories, and amended inventories.
- (d) As to the property on which the homestead is sought: Its legal description (or identifying data in the case of personal property); its common address (or location); the nature of the property (single family residence or other); whether it is community, quasi-community, or separate property of the decedent; whether any third party has an interest or claim thereto; whether it is specifically devised or bequeathed and, if so, to whom; its appraised value; the nature, amount, and basic details concerning all encumbrances; the period of time during which it has been (if it has) the principal residence of the person or persons on whose behalf the homestead is sought; any other facts which will assist the Court in determining that the property is the most appropriate to be set aside.
- (e) The period of time for which the homestead is sought.
- (f) The needs of the surviving spouse and minor children, including a statement of what other residential facilities, if any, are available to them; whether the surviving spouse has remarried; whether the minor children are in the care and custody of someone other than the surviving spouse.
- (g) The needs of the heirs or devisees of decedent.
- (h) The intent and estate plan of decedent, if any, and how such was manifested.
- (i) An itemization of all creditor's claims by name of claimant and amount, as well as the status of each claim. If time for filing claims has not expired, there should be a similar itemization of all known or suspected debts or claims against decedent as to which claims have not yet been filed. The extent to which (1) liquid assets, and (2) other non-exempt assets are available to satisfy claims and specific cash bequests. (Former Rule 1201, rev. Dec. 1993. Renumbered as Rule 1101, eff. July 1, 1998.)

RULE 1102 PETITION FOR FAMILY ALLOWANCE

(a) Necessary Allegations. All petitions for family allowance must state facts to show that the allowance prayed for is necessary and reasonable including:

- (1) The solvency of the estate;
- (2) Whether others are entitled to family allowance;
- (3) Approximate needs of the applicant, with reference to his or her standard of living; and
- (4) A general itemization statement of the applicant's property and income.

(b) Ex Parte Petitions Before Inventory.

(1) Petitions for family allowance presented ex parte and without notice granted before inventory will not be granted for a period in excess of six (6) months.

(2) If the petitioner is not the personal representative, consent to the allowance or a waiver of notice by the personal representative must accompany the petition.

(c) Notice of Petition Before Inventory. The Court may grant the family allowance for longer than six (6) months before inventory on a noticed hearing.

(d) Petition After Inventory or Any Subsequent Petition. If application is made after the inventory has been filed, or is a second or subsequent petition, it should be noticed and placed on the calendar. Subsequent orders will be limited to a definite period. (Former Rule 1202, rev. Dec. 1998. Renumbered as Rule 1102, eff. July 1, 1998.)

PART TWELVE

PETITIONS TO SET ASIDE SPOUSAL PROPERTY

**RULE 1201 REQUIRED ALLEGATION IN SUPPORT OF CLAIMED PROPERTY AS
PASSING OR BELONGING TO SURVIVING SPOUSE**

If the community or quasi-community property claim is based on any document, a copy of the document showing signatures with the portions of it relevant to the claim attached to the petition. If counsel reasonably believes that disclosure of the document would be detrimental to third parties, counsel may request the Court to place the document in a confidential folder. (Former Rule 1301, rev. Dec. 1993. Renumbered as Rule 1201 and amended, eff. July 1, 1998. As amended eff. January 1, 2003.)

PART THIRTEEN

GUARDIANSHIPS OF MINORS

RULE 1301 APPOINTMENT OF GUARDIAN OF MINOR

Probate Code Section 2106 provides that the Court in its discretion may issue letters of guardianship of the person or estate, or both, of more than one minor upon the same application. In proper cases the Court will appoint a guardian of the person or estate of more than one minor, but only if the minors so joined have a common parent. (Former Rule 1401, rev. Dec. 1993. Renumbered as Rule 1301, eff. July 1, 1998.)

RULE 1302 SUPPORTING DOCUMENTATION

Petitions for appointment will be filed with all supporting documentation. When known, the full names, including middle names, of the petitioner(s), the minor(s), the mother and father must be set forth in all petitions for guardianship. (Former Rule 1402, rev. Dec. 1993. Renumbered as Rule 1302, eff. July 1, 1998. As amended eff. January 1, 2003.)

RULE 1303 TEMPORARY APPOINTMENT OF GUARDIAN OF MINOR

Notice of a petition for appointment of a temporary guardian of a minor shall be given to the custodian of the minor, minor's parents and grandparents and minors age 12 or older. Notice may be dispensed with upon a showing of good cause. When the petitioner is either a parent or custodian, and the other parent(s) has been given notice or has waived notice, the petition need not be set for hearing on the calendar but may be presented ex parte. Twenty four (24) hours' notice must be given to the parents or a declaration of Due Diligence must be filed even if a Waiver of Notice has been signed. (Former Rule 1403, rev. Dec. 1993. Renumbered as Rule 1303 and amended, eff. July 1, 1998.)

RULE 1304 ORDER PRESCRIBING AND DISPENSING NOTICE RE APPOINTMENT GUARDIAN OF MINOR

Proposed orders prescribing notice shall normally be presented to the Court at the time of filing the petition. Orders dispensing with notice to living persons will normally not be made until the hearing on the permanent petition upon a showing of due diligence in attempts to give notice. (Former Rule 1404, rev. Dec. 1993. Renumbered as Rule 1304 and amended, eff. July 1, 1998.)

RULE 1305 GUARDIANSHIP INVESTIGATIONS

(a) An unrelated guardian of the person of a minor will not be appointed until a written report has been filed by the appropriate investigator or officer pursuant to Probate Code Section 1513, unless the Court directs that such referral be dispensed with.

(b) The Court Investigator's Office does not conduct investigations for petitions filed by relatives within the 2nd degree unless specifically ordered by the Court. Nevertheless, it is required that a Guardianship Questionnaire be completed and filed and that an additional copy of the Petition, Orders prescribing and Dispensing with Notice and Notice of Hearing to be given to the Court Investigator's Office. (Former Rule 1405, rev. Dec. 1993. Renumbered as Rule 1305, eff. July 1, 1998.)

RULE 1306 CONSULTATION WITH OTHER DEPARTMENTS RE HABEAS CORPUS OR CUSTODY PROCEEDINGS

Where a petition for guardianship of the person of a minor is pending, and where it appears to the Court that a custody proceeding or a writ of habeas corpus concerning the same minor is pending in any other department of the Superior Court, proceedings will be suspended until a consultation can be had between the Judge of the Probate Department and the Judge of the department in which such proceeding or writ is pending and a determination made as to whether or not such matter should be heard separately or a consolidation arranged. (Former Rule 1408, rev. Dec. 1993. Renumbered as Rule 1306, eff. July 1, 1998.)

RULE 1307 GUARDIANS OF THE PERSON WHEN ADOPTION PROCEEDINGS ARE PENDING

A guardian of the person of a minor will not be appointed if it appears that adoption proceedings are pending unless a report is filed under authority of Section 1513 of the Probate Code by the appropriate officer or investigator with the State Department of Social Services authorizing the granting of said guardianship. (Former Rule 1409, rev. Dec. 1993. Renumbered as Rule 1307, eff. July 1, 1998.)

RULE 1308 INCREASING AND DECREASING BOND OF GUARDIAN

When an increase in the guardian's bond is ordered, the Court favors the filing of an additional bond rather than filing of a substitute bond; and where a decrease in the liability of the guardian's bond is ordered the Court favors the use of an order decreasing liability under the existing bond rather than the filing of a substitute. (Former Rule 1410, rev. Dec. 1993. Renumbered as Rule 1308, eff. July 1, 1998.)

RULE 1309 DUTIES OF GUARDIAN - LIABILITY OF PARENTS TO SUPPORT CHILD

As there is a statutory liability upon the parents to support their children when one or both parents are living, the Court will not permit guardianship funds to be used for the minor's benefit except upon a showing of the parents' financial inability to adequately support the minor or other circumstances which would justify the Court in departing from this rule in the best interest of the minor. (Former Rule 1412, rev. Dec. 1993. Renumbered as Rule 1309 and amended, eff. July 1, 1998.)

RULE 1310 INVESTMENTS BY GUARDIANS

(a) The Court will not ordinarily approve the investment of the ward's funds in unsecured or secured loans to a near relative.

(b) Investment in real estate will not be approved unless supported by an appraisal by the probate Referee regularly appointed by the guardianship estate, and the guardian of the minor will not ordinarily be authorized to purchase real estate except for cash. (Former Rule 1416, rev. Dec. 1993. Renumbered as Rule 1310 and amended, eff. July 1, 1998.)

RULE 1311 ACCOUNTS OF GUARDIANSHIP

(a) The verified account is to be filed prior to the date set by the Court for the review hearing. When a guardian accounts for the assets of more than one minor, the accounting for each minor must be set forth separately.

(b) When a copy of a final account and written notice of the hearing thereof is served upon the ward not less than fifteen (15) days prior to the hearing, or the ward's written approval is filed, no appearance by the ward may be necessary. However, the Court does not favor the waiver by the ward of the guardian's final account where the ward has reached majority and normally will not approve a report when the account is waived unless the ward is present in Court at the time of hearing.

(c) Copies of investment account statements verifying the balance of cash and/or securities on hand shall be attached to all inventories. Letter verifications from the financial institution stating the balance as of the applicable date may be substituted for copies of statements. Substantial variation between the statement or verification and the balance reflected in the inventory shall be explained.

(d) Where payment for guardianship services is requested to be allowed third persons acting on behalf of a guardian, those persons shall sign a verification stating that they performed the services on the dates specified and received payment in the amount, if any, set forth in the account. The verification shall be attached to the account for the period in which the services were rendered.

(e) Duplicating, telephone, fax and other costs in guardianship estates - Ordinarily the Court will not allow reimbursement for costs of duplication of documents, telephone calls, FAX (except court charges), parking fees incurred by the attorney or guardian or ordinary mileage incurred by the attorney or guardian, as these are a part of overhead, and should be absorbed in fees or commissions.

The guardian is not reimbursed for the expenses of his or her trip to qualify, unless the guardian is waiving his or her fee.

(Former Rule 1417, rev. Dec. 1993. Renumbered as Rule 1311 and amended, eff. July 1, 1998. Amended, eff. January 1, 2000. Amended, eff. January 1, 2003. As amended eff July 1, 2003.)

RULE 1312 DUTIES AND LIABILITIES

Before Letters of Guardianship are issued, the Court-appointed Guardian shall sign and file a Statement of Duties and Liabilities on a form prescribed by the Probate Court. (Former Rule 1418, rev. Dec. 1993. Renumbered as Rule 1312, eff. July 1, 1998.)

RULE 1313 REVIEW HEARINGS

An account review hearing on Guardianships of the Estate shall be set within 14 months from the date of the initial appointment, and biennially thereafter. Guardians shall file the account 30 days prior to the review hearing. (Former Rule 1419, rev. Dec. 1993. Renumbered as Rule 1313 and amended, eff. July 1, 1998.)

RULE 1314 ANNUAL RENEWAL OF GUARDIANSHIP LETTERS

(a) Letters of Guardianship shall expire at the end of one year from the date of appointment and each year thereafter. The Court Investigator will forward an annual status report for completion by the guardian. The Letters will be renewed by the clerk upon filing of the status report with the Court Investigator. (Eff. July 1, 1998.)

RULE 1315 GUIDELINES FOR APPOINTMENT OF COUNSEL IN GUARDIANSHIPS OF MINORS

In appointing counsel for a child in a guardianship, the court shall adhere to the requirements of the Local Rules of the Superior Court of California, County of San Bernardino County, Chapter 15, Rule 1513. (Eff., July 1, 2003.)

PART FOURTEEN

PROBATE CONSERVATORSHIPS

RULE 1400 PETITIONS

The original and one extra copy for the Court Investigator of the petition, proposed order and all supporting documents shall be submitted. (Eff. July 1, 1998.)

RULE 1401 APPOINTMENT OF COURT INVESTIGATOR

(a) Unless the proposed conservatee is the petitioner or has signed a nomination of the conservator and both the proposed conservator and proposed conservatee will attend the hearing, the Court Investigator will conduct an investigation. To obtain the investigation, the following forms must also be prepared and filed with the petition: A declaration signed by a licensed medical or accredited practitioner; an Order Appointing Court Investigator; and a Probate Investigator's referral form. If the proposed conservatee is able but unwilling to attend the hearing, the medical declaration need not be filed.

(b) The Court Investigator's Office will not conduct a review until the Appointment Order is signed.

(c) The hearing will be set at least four (4) weeks from the date of filing. (Former Rule 1501, rev. Dec. 1993. Renumbered as Rule 1401 and amended, eff. July 1, 1998.)

RULE 1402 ATTORNEYS FOR CONSERVATEES

The representation of a conservatee by an attorney appointed by the Court ceases upon the hearing for which he or she was appointed, unless otherwise ordered by the Court. (Former Rule 1502, rev. Dec. 1993. Renumbered as Rule 1402, eff. July 1, 1998.)

RULE 1403 RESPONSIBILITIES OF THE CONSERVATOR

(a) The conservator of an estate must maintain all of the conservatee's liquid assets in the name of the conservatorship.

(b) A conservatee is not permitted to manage his estate without Court approval, except as to a reasonable allowance under Probate Code Section 2421 or as to earnings under Probate Code Section 2601. Allowances of not more than \$100.00 per month will be approved under Section 2403 without prior Court authorization. All other allowances should be presented to the Court for prior authorization under Section 2421. (Former Rule 1504, rev. Dec. 1993. Renumbered as Rule 1403 and amended, eff. July 1, 1998.)

RULE 1404 INVENTORY AND APPRAISEMENT OF SUCCESSOR CONSERVATOR

A successor conservator shall not be required to file an Inventory and Appraisement for assets received from the prior Conservator, but instead shall sign and file a receipt for such assets. The assets listed on the receipt so filed shall constitute the beginning balance for purposes of accounting by the successor conservator. A conformed copy of the receipt shall be provided to the prior conservator. (Former Rule 1505, rev. Dec. 1993. Renumbered as Rule 1404, eff. July 1, 1998.)

RULE 1405 SUBSTITUTED JUDGMENT - CREATION OF TRUSTS

Creation of trusts of the property of a conservatee (Probate Code § 2580 (b)(5)) will normally be approved only on the conditions that (1) the trustee be subject to the same obligations, terms and conditions as a conservator of the estate during the lifetime of the conservatee and (2) the trust instrument so obligate the trustee. These obligations, terms and conditions shall normally include, but need not be limited to, the following:

1. Posting bond for assets and income of the trust;
2. Accounting to the Court in the Conservatorship proceeding;
3. Conservatorship investment limitations;
4. Court approval and confirmation of gifts, hypothecations or sales of assets;
5. Providing for the conservatee's needs without regard for the interest of remainder beneficiaries;
6. Prior Court approval for payment of fees to attorneys, conservators and trustees; and
7. Payment of Court investigator fees. (Eff. July 1, 1998.)

RULE 1406 ACCOUNTINGS

(a) If the conservatorship also involves the person of the conservatee, the accounting petitions shall state the conservatee's residences during the accounting period.

(b) Requests to waive interim accountings under Probate Code section 2628 may be made on an ex parte basis. All final accountings, including estates qualifying under section 2628, shall be set for hearing. In all cases in which the conservator seeks an order dispensing with a formal accounting pursuant to section 2628, the beginning and ending dates of the accounting period sought to be waived must be specified. An order dispensing with the filing of a formal accounting does not relieve the conservator from the duty of filing subsequent 2628 petitions or, where the estate no longer qualifies, a formal accounting pursuant to section 2620. If, after payment of Court-approved conservator's and attorneys' fees, it appears to the satisfaction of the Court that the estate will continue indefinitely to meet the requirement of section 2628, the Court may dispense with future accountings.

(c) Whenever a current or final account is filed, notice shall be mailed to the Court Investigator's office.

(d) If compensation is sought by either the attorney or the conservator for services rendered to the estate during the accounting period, the amount of compensation sought shall be specified in the petition. Such services should be set forth in sufficient detail to allow the Court to ascertain the reasonableness of the fees, including the time, date, description, and hourly charge for each service for which compensation is sought. No compensation shall be paid unless first authorized by the Court.

(e) Copies of investment account statements verifying the balance of cash and/or securities on hand shall be attached to all inventories and accountings. Letter verifications from the financial institution stating the balance as of the applicable date may be substituted for copies of statements. Substantial variation between the statement or verification and the balance reflected in the inventory or account shall be explained.

(f) Where payment for conservatorship services is requested to be allowed third persons acting on behalf of a conservator, those persons shall sign a verification stating that they performed the services on the dates specified and received payment in the amount set forth in the account. The verification shall be attached to the account for the period in which the services were rendered.

(g) Duplicating, telephone, fax and other costs in conservatorship estates- Ordinarily the Court will not allow reimbursement for costs of duplication of documents, (telephone calls, FAX (except court charges), parking fees or ordinary mileage incurred by the attorney or Conservator, as these are part of overhead, and should be absorbed in fees or commissions.

The Conservator is not reimbursed for the expenses of his or her trip to qualify, unless the Conservator is waiving his or her fee. (Former Rule 1507, rev. Dec. 1993. Renumbered as Rule 1406 and amended, eff. July 1, 1998. Amended eff. January 1, 2000. As amended, eff. July 1, 2003.)

RULE 1407 COURT INVESTIGATOR REVIEW/FEEs

(a) The Court Investigator shall review all conservatorships subject to Section 1850 of the Probate Code. This review shall include a personal interview with the conservator of the estate to examine conservatorship records and assets.

(b) The Court shall annually assess the estate for each review conducted by the Court Investigator.

(c) Court Investigator fees for reviews are to be paid at the time the next accounting is filed.

(d) Payment of said assessment is to be made at the Clerk's office in the appropriate District. Upon payment of said assessment the clerk will forward to the Court a copy of their form indicating that payment has been made.

(e) No assessment is to be made in cases that are conservatorship of the person only. (Former Rule 1509, rev. Dec. 1993. Renumbered as Rule 1407 and amended, eff. July 1, 1998. As amended eff. January 1, 2003.)

RULE 1408 CHANGE OF RESIDENCE OF THE CONSERVATEE

The conservator shall notify the Court and the Court Investigator's office immediately of all changes in the residence of the conservatee. Said notice shall include the new telephone number. (Former Rule 1511, rev. Dec. 1993. Renumbered as Rule 1408 and amended, eff. July 1, 1998.)

RULE 1409 INDEPENDENT POWERS

In order to obtain the independent powers set forth in Probate Code Section 2591, specific facts justifying each independent power requested must be alleged. These powers will only be granted upon a showing of specific need. Independent powers are not available to temporary conservators unless granted after a noticed hearing. (Former Rule 1512, rev. Dec. 1993. Renumbered as Rule 1409 and amended, eff. July 1, 1998.)

RULE 1410 TERMINATION

(a) Where a Petition for Termination is filed alleging the conservatorship is no longer required, the petition will ordinarily not be granted unless the conservatee personally appears in Court.

(b) As promptly as possible after the death of a conservatee (within 120 days, unless good cause for delay is shown), the conservator of the estate shall file a Petition for Discharge and a Final Accounting.

(c) Court Investigator fees are to be paid at the time the Petition for Termination is filed, or such Petition shall set forth the reasons for no doing so.

(d) No Order of Discharge shall be issued until proof of payment of all Court Investigator fees is received by the Court. (Former Rule 1513, rev. Dec. 1993. Renumbered as Rule 1410 and amended, eff. July 1, 1998.)

RULE 1411 CHANGE OF VENUE

Upon transfer of a conservatorship to San Bernardino County notice shall be given to the Court Investigator's office. (Former Rule 1515, rev. Dec. 1993. Renumbered as Rule 1411, eff. July 1, 1998.)

RULE 1412 NOTICE OF HEARING ON EX PARTE PETITION FOR APPOINTMENT OF TEMPORARY CONSERVATOR

(a) Unless the proposed temporary conservator is a nominee of the proposed conservatee, or unless the Petition for Appointment of Conservator includes a Doctor's Declaration indicating that such Notice would be ineffectual, twenty-four (24) hours' notice of the Ex Parte Hearing shall be given to the proposed conservatee.

(b) Twenty-four (24) hours' notice of the Ex Parte Hearing should be given to the proposed conservatee's relatives within the first degree of consanguinity, unless the Court, for good cause, dispenses with this requirement. (Former Rule 1516, rev. Dec. 1993. Renumbered as Rule 1412 and amended, eff. July 1, 1999.)

RULE 1413 CONFIDENTIAL INCOME TAX RETURNS

(a) Conservators of the estate shall furnish the court with a copy of the last federal income tax return filed by the conservatee prior to commencement of the conservatorship. The copy of the return shall be marked, "Confidential," and shall be filed in the Confidential File no later than the hearing date for review of filing of the Inventory and Appraisement.

If the return is not filed by the review date, a verified declaration shall be filed setting forth the reason therefore and the date when the return can reasonably be expected to be filed.

(b) The last federal income tax return filed in the Confidential File pursuant to this part is not open to inspection by any person other than the parties to the proceeding and their attorneys and the probate department, except upon the written authority of the judge of the superior court. A judge of the superior court may not authorize anyone to inspect the last federal income tax return except in exceptional circumstances and for good cause. (Eff. January 1, 2000.)

PART FIFTEEN

TRUSTS

RULE 1501 BENEFICIARIES TO BE LISTED IN PETITION

All petitions filed under Probate Code Section 17200, involving a testamentary trust or an inter vivos trust must set forth the names and last known addresses of all living beneficiaries (all persons in being who shall or may participate in the income or corpus of the trust), whether their interests be vested or contingent. (Former Rule 1603, rev. Dec. 1993. Renumbered as Rule 1501, eff. July 1, 1998.)

SUBJECT INDEX

GENERAL RULES

APPEALS AND WRITS

Appeals

- Attorney Fees, see Attorney fees and Expenses
- Filing of, Rule 131
- Hearings, Rule 332
- Writs, Rules 540, 730.2 – 730.3

ATTORNEY FEES AND EXPENSES

Appeals, rule 1404

Civil cases, Rule 1417

Claims for payment, Rules 1410 – 1416, 1462 and Appendix I, Rules 903 - 904

Contract actions, Rules 1430 – 1432

Court appointed counsel

Criminal cases, Rules 1329 – 1330, 1415-1416

Civil cases, Rule 1417

Compensation, Rule 1450.2

Appeals, Rule 1404

Generally, Rules 1418 – 1419

Criminal cases, Rules 1402 – 1404, 1418

Civil cases, Rule 1405

Death penalty cases, Rule 1418, 1461

Extraordinary Attorney Fees, Rule 1416

Family Law cases, Rule 1417

Fee Schedule for Civil and Family Law Cases, Rule 1417

Juvenile cases, Rule 1401

Registration fee, Rule 1462

Reimbursement Order

Procedure, Rule 1464

Collection of, Rules 1480, 1490

Criminal cases

Generally, Rules 1402, 1415

Complaints re fees, Rule 1461

Complex felonies, Rule 1403

Death penalty/LWOP cases, Rules 1403, 1419

Extraordinary fees, Rules 1416

Juvenile Court cases, Rules 1401, 1460.1

Ordinary expenses, Rule 1415, Rule 1418

Experts and Investigations

See, **EXPERTS AND INVESTIGATORS**

Family law matters

- Appointed Counsel, Rule 1405
- Fee Schedule for Civil and Family Law Cases, Rule 1405
- Generally, Rule 1434
- Defaults, Rule 1434.1
- Order to Show Cause, Rules 1434. 2 – 1434.3
- Trial, Rule 1434.4
- Waiver, objection to fees, Rule 1434.5

Foreclosures, Rule 1433

Juvenile cases, Rule 1401

Ordinary Fees and Expenses, Rules 1415, 1418

Probate matters

- Compromise of disputed claims, Rules 1420 – 1425
- Domestic violence protective orders involving a minor, Rule 1490
- Proceedings to establish a limited conservatorship, Rule 1490
- Requests for fees, Appendix I, Rules 903 – 904

Representation of a minor

- Application for fees, Rules 1441 - 1422
- Domestic violence protective orders, Rule 1490

See, also, Tort cases involving a minor, incompetent or insane person, *infra*

Tort cases involving a minor, incompetent or insane person, Rules 1420 – 1425

CIVIL MATTERS

Alternative trial proceedings, Rules 409, 620

Arbitration, Rules 409, 620

Attorney fees

See, **ATTORNEY FEES AND EXPENSES**

California Environmental Quality Act (CEQA) cases, Rule 800

Case Management Conference, Rule 408

Case Management rules

- Assigned judges, Rule 403
- Case Management Conference, Rule 408
- Cases, subject to, Rules 400 – 404, 413
- Certification of Assignment, Rule 404
- Continuances, Rule 418, 418.1 – 418.2
- Economic Litigation Program, Rule 900
- Exceptional cases, Rules 402.1, 412, 413
- Scheduling conference, Rule 412
- Settlement conferences, Rules 410, 418.2
- Trial, Rules 401, 415 - 416
- Trial Court Delay Reduction Act, Rule 400
- Trial ready list, Rule 415
- Trial Management Conference, Rule 411
- Uncontested matters, Rules 417

Complaint

Filing of, Rule 131

Continuances, Rule 418, 418.1 – 418.2, 550, 616, 618

Courtroom decorum, Rule 1900

Defaults

Hearings, Rule 321.1

Forms, use of, Rule 321.2 – 321.3

Depositions, Rules 1920 – 1921

Direct calendaring, Rule 311

Economic Litigation Program

See, Case Management Rules, *infra*

Ex parte applications

See, **EX PARTE PROCEEDINGS**

Experts

See, **EXPERTS AND INVESTIGATORS**

Law and Motion

Continuances, Rule 418.2

Filing of, Rule 510

Continuances, Rule 550

Hearing dates, Rule 520

Notice, Rule 520

Removal from calendar, Rule 560

Supplemental proceedings, Rule 132.3

Judgments, Rule 591.2, 593

Judicial assignments, Rule 530

Minute orders, Rule 591.1

Opposition, failure to serve and file, Rule 592

Orders, Rules 591.1, 591.2, 593

Removing motions from calendar, Rule 560

Writs, Rule 540

Proof of Service, Rule 405

Rent Deposit Pilot Project

See, Unlawful Detainer Actions, *infra*

Scheduling conference, Rule 412

Settlement

See, Alternative trial proceedings, *infra*

See, Arbitration, *infra*

See, Settlement Conferences, *infra*

Notice required, Rule 617

Settlement Conferences

Mandatory Settlement Conferences

Generally, Rules 410, 610, 610.3

Attendance at, Rules 611, 615

Briefs, Rule 612

Continuances, Rule 616, 618

Discovery, Rule 613

Offers, Rule 614

Voluntary Settlement Conferences

Generally, Rules 610.1 – 610.2

Continuances, Rule 418.2

Small claims actions, Chapter 11

Telephonic appearances

See, **TELEPHONIC APPEARANCES**

Trial

Counsel, duties of, Rule 416

Trial policy, Rule 401

Trial ready list, Rule 415

Trial Management Conference, Rule 411

Uncontested matters, Rules 331, 417

Uninsured motorist cases, Rules 402, 413

Unlawful detainer actions,

Generally, Rule 1000

Rent Deposit Pilot Project, Rule 1001

COMMISSIONERS

Appointment procedures, Rule 260

Authority of, Rule 263

Disciplinary procedures, Rules 270-272

Probate matters, Appendix I, Rule 105

Qualifications, Rule 261

Vacation, Rule 262

COURT ADMINISTRATION

Court Executive Officer

Disciplinary procedures, Rule 270, 272

Duties and responsibilities, Rule 241 – 242.6

Employment status, rule 243

Selection of, Rule 240

Executive Committee

Composition, Rule 230

Duties of, Rules 231

Effect of Action by, Rule 234

Quorum, Rule 233

Term of Office, Rule 232

Judges

Annual meetings, Rule 220

Assignments or transfers, Rule 120

Executive committee

See, Executive Committee, *infra*

Presiding Judge

See, Presiding Judge, infra

Proxy votes, Rule 221

Special meetings, Rules 220.1 – 220.2

Presiding Judge

Duties, Rule 210

Election of, Rule 211

Nominations procedures, Rule 212

Removal, Rule 213

Vacancy, Rule 213

COURT DISTRICTS

Defined, Rule 1302

Filing of actions or proceedings

Civil actions and proceedings, Rule 131

Criminal action or proceeding, Rule 1301

Family law actions and proceedings, Rule 131

Juvenile proceedings, Rules 131 - 132

Mental health proceedings, Rules 131 -132

Jury Venires, Rule 133

Supplemental proceedings, hearing on, Rule 132.3

Transfer of civil actions or proceedings, Rule 132.2

Transfer of criminal actions or proceedings, Rule 132.2

COURT RULES

Generally, Rule 111

Conflict with California Rules of Court, Rule 310

Application of, Rule 115

Citation of, Rule 114

Effect of, Rule 114

Effective Date, Rule 112

CRIMINAL MATTERS

Generally, Rule 1300

Appearances of counsel, Rules 1306 - 1307

Attorney fees

See, ATTORNEY FEES AND EXPENSES

Calendaring of, Rules 1303 – 1305, 1308

Court appointed counsel

Death penalty cases, Rule 1450.3

Life without possibility of parole cases, Rule 1450.3

See, also ATTORNEY FEES AND EXPENSES

Courtroom decorum, Rule 1900

Death penalty cases, Rules 1419, 1460.5

Expenses

See, ATTORNEY FEES AND EXPENSES

Experts

See, EXPERTS AND INVESTIGATORS

Filing of, Rules 1301, 1327

Investigators

See, EXPERTS AND INVESTIGATORS

Law and motion

Generally, Rule 1308

Continuances, Rule 1321

Motion to quash warrant, Rule 1309 - 1310

Motion to suppress, Rule 1309

Penal Code section 995 motion, Rule 1320

Venue, 1327

ELECTRONIC FILING

Generally, Rule 1800

Attachments to documents, Rule 1840(l)

Definitions, Rule 1810

Electronic mail address

Presumption of validity, Rule 1840(m)

Change of address, Rule 1840(n)

Fax Filings

See FAX FILINGS

Filing fees, Rules 1831, 1840(h)

Participation, Rule 1820

Process

Certification, Rule 1840(j)

Date and time of filing, Rule 1840(a)

Document format, Rule 1850

Endorsement of documents, Rule 1840(f)(1), (2)

Errors or malfunctions, Rules 1840(c), 1840(d)(2)

Judicial Council Forms, use of, rule 1840(e)

Notice of acceptance of document for filing, Rule 1840(d)

Receipt of document, Rule 1840(b)

Rejected filings, Rule 1840(d)(1)

Summons, issuance of, Rule 1840(g)

Public access, Rule 1840(i)

Public inquiries, Rule 1860

Service, Rule 1840(m)

Signed documents

Demand for, Rule 1840(k)(2)

Examination of, Rule 1840(k)(3)

Possession of, Rule 1840(k)(1)

EX PARTE PROCEEDINGS

Civil applications, Rules 540, 730.1 - 730.2

Criminal applications, Rules 730.1, 730.3

Family law applications, Rules 730.1, 730.5, 1511

Form, Rule 712

Fees, Rule 711

Juvenile applications, Rules 730.1, 730.4

Limitations on, Rule 720

Mental health applications, Rules 730.1, 730.7

Probate applications, Rules 730.1, 730.6 and Appendix I, Rules 607 – 609, 1412

Special applications

Appointment of counsel for military personnel, Rule 740.4

Appointment of guardian ad litem, Rules 711, 740.1

Order extending time, Rule 740.3

Order for writ of execution, Rule 740.9

Order for payment of money

Money not deposited with court, Rule 740.8

Money deposited with court, Rule 740.7

Order for receipt of personal property, Rule 740.8

Order shortening time, Rule 740.3

Reduction of undertaking, Rules 740.2, 711

Substituted service, Rule 740.6

EXPERTS AND INVESTIGATORS

Claims for payment

Form of claim, Rule 1460.1

Review of claims, Rule 1460.1

Submission of claim, Rule 1460.1

Court appointment of, Rules 1451.2, 1910

Fees

Expenses, Rule 1460.1

Experts, Rules 1460.3 – 1460.7

Extraordinary fees, Rules 1440, 1460.2 – 1460.3, 1460.7

Investigators, Rule 1460.2, 1460.6

Prior approval, Rule 1460.2 – 1460.3

FAMILY LAW MATTERS

Attorney fees

See, **ATTORNEY FEES AND EXPENSES**

Courtroom decorum, Rule 1900

Ex parte applications

See, **EX PARTE PROCEEDINGS**

Filing of, Rule 131

Hearings, Rule 131, 132.2 – 132.3

Ex Parte Communications, Rule 1510.3

Mediation, Rules 1510.1 – 1510.2

FAX FILING, Rule 1830

JUVENILE CASES

Attorney fees

See, ATTORNEY FEES AND EXPENSES

Attorneys

Attendance at hearings and settlement conferences, Rules 1630, 1650, 1670.5

Certification of competency, Rule 1692, 1692.1 – 1692.8

Client complaints, Rule 1691

Sanctions, Rules 1610, 1630

Child Advocacy Program

See, Court Appointed Special Advocate/Guardian Ad Litem Program, infra

Court Appointed Special Advocate/Guardian Ad Litem Program

Generally, Rule 1693

Child Advocacy Advisory Council, Rule 1693.4

Confidentiality, Rule 1693.5

Referral of cases, Rule 1693.3

Volunteers, Rules 1693.1 – 1693.3

Continuances, Rule 1640, 1640.1, 1640.2, 1670.5

Courtroom decorum, Rule 1900

Experts

See, EXPERTS AND INVESTIGATORS

Investigators

See, EXPERTS AND INVESTIGATORS

Filing of, Rule 131

Hearings, Rules 630, 1650, 1670.5, 1321

Motions

Form of papers, Rule 1650, 1650.4

Hearing dates, Rule 1650

Notice, Rules 1650, 1650.1, 1650.4

Pursuant to Welfare & Institutions Code section 700.1, rule 1650.4

Reply papers, filing and service of, Rule 1650.3

Responsive papers, filing and service of, Rule 1650.2

Orders shortening time, Rule 1660

Sanctions, Rules 1610, 1630

Proceeding under Welfare & Institutions Code 600 et seq,

Disclosure of information pursuant to Penal Code section 1054 et seq., Rule 1680.1

Discovery, Rule 1680

Release of information

Generally, Rule 1690

Objection to, Rule 1690.1

Review by court, Rule 1690.2

Reports, filing of, Rule 1620

Settlement conferences

Generally, Rule 1670

Attendance of counsel, Rule 1670.5

Continuances, Rule 1670.5

Pretrial at-issue memorandum, Rule 1670.1,

Pretrial at-issue order, Rules 1670.3 - 1670.4

Procedure, Rule 1670.2

Report, jurisdictional or dispositional, Rule 1670.6

Attorney fees

See, **ATTORNEY FEES AND EXPENSES**

Ex parte proceedings

See **EX PARTE PROCEEDINGS**

Filing of, Rule 131

Hearings, Rule 132

**PROBATE MATTERS – Unless otherwise stated, all citations refer to Appendix I of
Local Rules**

Generally, Rule 101

Accounting

Creditors, actions re, Rule 905

Investment and account statements required, Rule 908

Review Dates, Rule 901

Statement of compensation, Rule 904

Waiver, Rule 902

Approved matters, Rule 102

Attorney fees

See, **ATTORNEY FEES AND EXPENSES**

Attorneys, appearances, Rule 104

Bonds

Sale of real property, Rule 401

Petition for authority to borrow money, Rule 402

Preliminary distribution, Rule 404

Nonresident personal representative, Rule 405

Contested matters, Rule 107

Continuances

To permit filing of contest or objection, Rule 106

Other contested matters, Rule 107

Courtroom decorum, Local Rule 1900

Commissioners, use of, Rule 105

Creditors' claims

Allowance of, Rule 702

Funeral claims, Rule 703

Personal representative's claims, Rule 704

Rejection of, Rule 702

Reported in petition for distribution, Rule 705

Death or missing persons, Rule 617

Ex parte proceedings

See **EX PARTE PROCEEDINGS**

Executors and administrators

- Public administrator, Rule 304
- Special administration, Rule 303

Family allowance

- See*, Petitions, *infra*

Guardianships of minors

- Accounts of guardians, Rules 1311, 1313
- Appointment of guardian, Rules 1301, 1303
- Bond of guardian, Rule 1308
- Coordination with other proceedings, Rule 1306 – 1307
- Duties of guardian, Rules 1309, 1312
- Guardianship letters, renewal of, Rule 1314
- Investigation of guardian, Rules 1305, 1314
- Investments by guardian, Rule 1310
- Petition for appointment of guardian
 - Generally, Rules 1301 - 1302
 - Order re notice, Rule 1304
 - Temporary appointment, Rule 1303
- Review hearings, Rule 1313

Homesteads, Rule 1101

Independent administration

- Preliminary distribution, Rule 501
- Report and petition for final distribution, Rule 502

Newspapers of general circulation, Rule 202

Notice

- Advancing hearings, Rule 204
- Petitions for appointment of guardian
 - See* Guardianships of minors, *infra*
- Requisite mailing or delivery, unknown address, Rule 205
- Special letters, Rule 203

Orders, Rules 614, 615, 1304

Petitions and inventories

- Addresses, Rules 605, 612, 1501
- Allegations re heirs, Rule 604

Allegations re spousal property, Rule 1201

- Inventory and appraisal, Rule 1404

Investment and account statements, when required, Rule 908

Petition for distribution

- Actions re creditors, Rule 905
- Assets
 - Description of, Rule 906
 - Manner of distribution, Rule 907
- Petition for family allowance, Rule 613 1102
- Petition for instructions, limitations on use, Rule 606
- Petition for sale of personal property, Rule 611
- Petition to set aside small estate, Rule 1001
- Petition to set aside spousal property, Rule 1201

Real property, description of, Rule 610

Trusts, names and addresses of beneficiaries required, Rule 1501

Pleadings

Captions, Form 601

Filing of, Rule 603

Forms, use of, Rules 201, 602

Probate Conservatorships

Accounting, Rule 1406

Attorney for conservatee, termination of representation, Rule 1402

Ex parte proceedings

See **EX PARTE PROCEEDINGS**

Fees, court investigator, Rule 1407

Independent powers, rule 1409

Inventory and appraisal, Rule 1404

Investigation of conservator, Rules 1401, 1407

Petitions, form of, Rule 1400

Property of conservatee, creation of trust, Rule 1405

Residence of conservatee, change of, Rule 1408

Responsibilities of conservator, Rules 1403, 1413

Tax returns, Rule 1413

Termination of conservatorship, Rule 1410

Venue, change of, Rule 1411

Sales

Broker's commissions, Rule 805

Community apartments, Rule 801

Condominiums, Rule 801

Cooperative apartments, rule 801

Depreciating property, Rule 804

Perishable property, Rule 804

Petition for sale of personal property, Rule 611

Private sales, Rule 807

Real and personal property, Rules 610, 802, 803, 805

Securities, Rule 805

Temporary judges, use of, Rule 105

TELEPHONIC APPEARANCES

Generally, Rule 330

Prior approval required, Rule 330.1

Notification to court, Rule 330.2 – 330.3

Placement of call, Rule 330.4

Cost of call, Rule 330.5

Non-appearance, Rule 330.6

Trailing or recall status, Rule 330.7